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INVESTMENT IN THE UNITED STATES BY FOREIGN GOVERNMENTS OR FOREIGN GOVERNMENT-CONTROLLED INSTITUTIONS

Background

It is anticipated that the majority of investments in the United States from oil producing nations will be by governments or government-controlled institutions. Accordingly, the CIEP Working Group on Foreign Investment in the U.S. was asked to review U.S. laws and regulations to determine the problem areas that might be encountered with respect to investment in this country by foreign governments or foreign government-controlled institutions. (See Tab A for terms of reference and draft study outline.)

The group examined the following general areas: general restrictions on the activities of foreign governments or government-owned corporations; the application of U.S. anti-trust, SEC, and tax laws to such entities; and problems of sovereign immunity. Possible difficulties relating to dispute settlements and the application of USG reporting requirements were also considered. Preliminary findings with respect to each of these areas are set forth in summary form below, and copies of the participating agencies' submissions are attached.

It should be noted that the scope of this review was limited to the laws and regulations that potentially impact on the investment activities of foreign governments *per se*. It should be kept in mind that a foreign government investor would also be subject to numerous other restrictions or regulations that apply to foreign investment in the United States in general -- regardless of whether the investor is a public or private entity. A summary of these regulations is attached at Tab B.

Conclusion

Any preliminary discussions concerning bilateral economic ties with oil producing nations should include the question of the application of U.S. laws to foreign government investment. In many instances, the precise application of such laws is unclear and could lead to unnecessary misunderstandings if investing governments are not adequately informed before they attempt to make significant investment in the U.S.

For example, all foreign investment is prohibited in certain areas. Disclosure and reporting requirements would apply to governments and require information they may not want to provide. In addition, the way specific investments are treated for sovereign immunity, tax and antitrust purposes may turn on legal technicalities as to the form and nature of the investment (i.e. is the investment made by the government, a government agency, a U.S. corporation wholly owned by the government or a foreign corporation owned by the government?). These factors -- combined with an anticipated unfamiliarity with the U.S. legal system generally and the details of the relevant laws and regulations in particular -- could lead governments inexperienced in international direct investment to conclude that they were being discriminated against by the U.S.

To help avoid any such misunderstanding, our representatives in bilateral economic talks with oil producing nations should point out that (1) our laws provide for rather extensive regulation of foreign investment generally; (2) these laws prohibit foreign investment in a number of areas; (3) special laws may apply to government or government-controlled investors in certain areas; and (4) expert private legal advice and consultation with relevant USG agencies (e.g. IRS or Justice or State) should precede any substantial investment. While the initial discussions need not go into detail, they should make it clear that existing U.S. laws must be taken into account in planning the form and extent of investment in the U.S. by a foreign government.

In addition, the way in which our laws treat government or government-controlled investors could create concerns in Congress. Certain forms of government investment in the U.S. are exempt from U.S. tax; and certain sections of our antitrust laws apply only to "corporations" and not "governments". Some may argue that this gives foreign governments an unfair advantage over domestic investors -- an allegation which could give added impetus to those in Congress urging restrictions on foreign investment in the U.S.

Existing Restrictions

Existing federal legislation imposes restrictions on foreign investment in general in certain sectors of the U.S. economy. The most important sectors affected are classified defense work, coastwise and freshwater shipping, atomic energy, domestic air transport, communications, exploitation of Federal mineral lands, and hydroelectric power. With minor exceptions, these existing restrictions apply to foreign governments and government-controlled institutions and would block their investment in these sectors.

Some states may have additional restrictions on foreign government investment (e.g. foreign government-controlled insurance companies are barred in most states); and state laws are being researched to identify any additional restrictions.

(See Tab C for existing federal restrictions. The lists at Tab C were not prepared with government investment in mind and there may be specific additional restrictions on investment by foreign governments or government-controlled organizations. We are not aware of any such additional restrictions but will continue to research the question).

Existing Investment by Governments or Government Controlled Institutions

In spite of the restrictions on foreign investment in the U.S., a number of foreign governments have existing investments in the U.S. A partial list of foreign government-controlled entities having investment in the U.S. is at Tab D.

Sovereign Immunity

Under the classic, or absolute, doctrine of sovereign immunity foreign governments and their agencies could not be sued in U.S. courts. However, in 1952 the State Department announced that it would follow the so-called "restrictive" theory of sovereign immunity. Under this doctrine foreign governments engaging in sovereign or public acts were immune from suit in U.S. courts, but not when they engaged in commercial acts. Even under the restrictive theory, a sovereign's assets were immune from execution.

The doctrine still guides U.S. policy in this area, but it has involved several problems. These concern (1) the lack of a statutory procedure for service of process; (2) immunity of a foreign government from execution of a judgment; and (3) the fact that the State Department and not the courts determine factual and legal questions about the validity of a foreign government's claim of sovereign immunity.

A bill (H.R. 3493) has been drafted which would deal with these problems. Important sections of this bill would provide a more satisfactory method of service; establish means for obtaining satisfaction of judgment related to a claim based on commercial activity and incorporate the restrictive theory of sovereign immunity into statutory law. The bill would, thus, preserve immunity for "public" acts but not for transactions or acts that are commercial in nature (or where immunity has been waived). Hearings have been held on this bill, but Congressional action on it is not expected before the end of this year.

Foreign governments should be advised that they should not expect sovereign immunity to protect them from suit with respect to most investments in the U.S. In addition, if the legislation noted above is adopted a government's assets would be subject to execution in satisfaction of a judgment.

(See Tab E for a State Department paper concerning sovereign immunity.)

USG Statistical Reporting Requirements

Existing reporting requirements relating to collection of foreign direct investment statistics apply to foreign governments. This means that they would be required to report all investments to the Bureau of Economic Affairs in the Commerce Department when they are made. In addition, governments would be required to report quarterly with respect to investment over $2 million.

However, the Bureau of Economic Analysis indicates that the regulations requiring reporting are rarely observed by companies in which a foreign government has a controlling interest, and the USG presently has no way of enforcing them against a government or government controlled investor. Therefore, foreign governments should be advised that existing regulations require reporting with respect to their investment in the U.S.

(See Tab F for a copy of reporting requirements that would be applicable to foreign governments and government controlled entities.)

Tax Laws

Foreign governments are generally exempt from tax on investment in the United States. However, the exemption does not apply to the income of a separate profit-making corporation which is owned by a foreign government. (Distributions to the government from such corporations would, however, be tax free.)

In determining whether a foreign government controlled corporation is subject to tax, the test applied by the IRS is whether "its purposes, functions and activities, taken as a whole, customarily are attributable to and carried on by private enterprises for profit in the United States." Under its guidelines, the IRS has ruled that the Kuwait Development Fund was exempt from tax because its activities did not resemble those carried on by private enterprises in this country. Saudi government-owned corporations such as Petromin and SAMA might or might not be taxable depending on the nature of their activities.

In general, foreign governments should be advised that whether or not they are subject to tax depends on the nature of their operations and that consultations with IRS would be advisable.

Given the uncertainties outlined above, it may be necessary to find some means of clarifying the manner in which a foreign government and its instrumentation would be taxed. A bilateral tax treaty would represent one approach -- a possible model being the U.S.-USSR Income Tax Convention (which has not yet been ratified).

(See Tab G for a Treasury Paper dealing with tax aspects of foreign government investments.)

Antitrust Laws

A foreign government's susceptibility to challenge on antitrust grounds of its acquisition of an American company would turn on the type of entity used to carry out the investment. American courts have taken the position that "the Sherman Act does not confer jurisdiction on United States courts over acts by foreign sovereigns". Only acts of "persons and corporations" are covered.

However, the precedents do not provide clear guidance on this point. Under old Section 7 of the Sherman Act (later recodified as Section 4 of the Clayton Act) district courts held that two foreign governments (Kuwait and Vietnam) were "persons" entitled to seek damage recoveries; and the Sherman Act clearly applied to major anti-competitive mergers. As regards the acquisition of assets, Section 7 of the Clayton Act -- the major antitrust weapon against anti-competitive mergers, or acquisitions or joint ventures --

applied only to a corporation (defined elsewhere as an entity "organized to carry on business for its own profit or that of its members..."). When applied to stock acquisition, Section 7 applied only to transactions by a "corporation engaged in commerce".

Thus, the key factor in any determination as to the applicability of U.S. antitrust laws to the investment activity of a foreign government would be whether it used a separate corporation or trust which generally engaged in commercial activity.

(See Tab H for the Justice Department discussion of the application of our antitrust laws to government investment.)

SEC Laws and Regulations

No differentiation is made between foreign governments and other persons in federal laws governing investments in U.S. securities. With regard to the issuance of securities, the only distinctive requirements made of foreign governments are that they must submit specific forms of registration statements and annual reports. The reporting and disclosure requirements of the Securities Exchange Act of 1934 do apply to foreign governments and foreign government-controlled corporations. For example, this means that any government (or government-controlled entity) acquiring beneficial ownership of more than 5% of any registered equity security must report its identity, the source of its funds and the purpose of the transactions.

(See Tab I for an SEC paper dealing with application of the SEC laws and regulations.)

Banking Laws and Regulations

The bank holding company legislation does not distinguish between U.S. holdings of foreign banks that are privately owned from those that are wholly or partly government owned, nor do there appear to be such distinctions in other Federal or State law.

(See Tab J for a Federal Reserve paper dealing with activities of foreign governments in the banking sector.)

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

LIMITED OFFICIAL USE

April 30, 1974

MEMORANDUM FOR PETER M. FLANIGAN

FROM: CHARLES A. COOPER CAC

SUBJECT: Upcoming Discussions with the Saudis Concerning Our Overall Bilateral Relationship

It is clear that virtually all investment in the U.S. from Saudi Arabia will be by the government or government-owned institutions. This fact may raise special problems both for the Administration and for the Congress which should be explored with the Saudis during the upcoming discussions concerning our overall bilateral arrangements.

A Council of International Economic Policy interagency working group has been reviewing the question of foreign investment in the U.S. since late last summer. I have, therefore, asked this working group to focus on the special problems (if any) which would be created by large scale investment by foreign governments or foreign government controlled institutions. I would expect that the group would consider such questions as:

1. Restrictions (if any) in existing federal or state laws on the activities of foreign governments or government-owned corporations;

2. The application of our antitrust, SEC and tax laws to foreign government-owned entities;

3. Problems of soverign immunity -- both with respect to immunity from suit and execution on government assets; and

4. Special technical and Congressional problems that might be created by having private U.S. firms controlled by foreign governments who might make decisions for non-economic reasons.

I have asked the CIEP group to have a preliminary report to me by May 15, 1974. It could then serve as background for the bilateral talks with the Saudis. I have spoken to Jack Bennett at Treasury who endorses a CIEP working group on this subject.

cc: Joseph Sisco
Thomas Enders
Jack Bennett

Hd

COUNCIL ON INTERNATIONAL ECONOMIC POLICY
WASHINGTON, D.C. 20500

April 30, 1974

MEMORANDUM FOR: PARTICIPANTS OF THE CIEP REVERSE INVESTMENT STUDY

FROM: JOHN M. NIEHUSS

SUBJECT: Investment in the U.S. by foreign governments or foreign government-controlled institutions

The attached memo from Charles Cooper of the National Security Council to Mr. Flanigan is self-explanatory. In essence, it (1) asks that the CIEP Reverse Investment Group consider whether there are any special problems created by large scale investment in the U.S. by foreign governments or foreign government-controlled institutions and (2) suggests certain problems which need to be considered.

In order to meet the May 15 deadline requested by Mr. Cooper, it will be necessary to have a meeting early next week to organize work in this area. Therefore, we will meet on Monday, May 6 at 11:00 a.m. in Room 208, Old Executive Office Building. Please inform my secretary (456-2273) by close of business Friday who will be attending from your office.

In preparation for the meeting it would be useful if members of the working group could review their own agency's activities (if any) in this area and give some advance thought to the problems that might be created. At the meeting, we will prepare a short study outline and assign responsibility for preparing preliminary reports by May 15.

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DRAFT STUDY OUTLINE RE INVESTMENT IN THE U.S. BY FOREIGN GOVERNMENTS OR GOVERNMENT CONTROLLED CORPORATIONS

1. Existing Restrictions

   a. Do all of the restrictions on foreign investment in the U.S. by "foreign controlled corporations" or "aliens" apply to "government" as well?

      (1) i.e. is there a technical distinction that means some existing laws do not apply?

   b. Restrictions which apply specifically to government or government controlled entities

      (1) e.g. government controlled insurance companies

      (2) Check USCA Index

2. Application of antitrust laws

   a. Section 7 of Clayton Act applies only to "corporations" and also does not apply to acquisition of stock for "investment."

   b. Section 8 of Clayton Act re interlocking directions

   c. Sherman Act

      (1) Is a "government" a "person" for the purposes of Section 2 of the Sherman Act.

3. Application of SEC laws and regulations

   a. Any special problems re portfolio investment by foreign government (or government controlled entity)?

      (1) e.g. disclosure problems; financial reporting problems.

   b. Do same requires (e.g. Section 13(d) statement) apply to governments?

4. Application of U.S. Tax Laws

   a. Effect of Section 892 of IRC which exempts from taxation the income of "foreign governments" from

(1) investments in U.S. securities or

(2) interest on deposits in U.S. banks?

b. Effect of Rev. Rule 66-73 which exempts an organization wholly owned by a foreign government provided it does not constitute a "corporation" as that term is generally understood in the U.S.

5. Problems of Sovereign Immunity (i.e. the ability to sue and collect from a foreign government)

a. The Restrictive Theory of Sovereign Immunity (The Tate) Letter)

(1) immunity from suit

(2) immunity from execution on assets to collect a judgment

(3) problems re service of process

b. Possible effect on the willingness of U.S. corporations and financial institutions to enter into contracts, accept notes as collateral, etc.

6. Dispute Settlement with a Foreign Government Investor

a. U.S. Courts-Sovereign Immunity Problems (see above)

b. International Arbitration

c. International Center for the Settlement of Investment Disputes (ICSID)

(1) ICSID jurisdiction extends to "any legal dispute arising directly out of an investment between a Contracting State (or any constituent subdivision or agency) and a national of another Contracting State"

(2) Are oil producers members of ICSID?

(3) Would ICSID apply to investments by a foreign government (or a government controlled entity) in the U.S.?

7. List of existing government or government controlled activities in the U.S.

a. BP (40% UK government owned but government, by practice, does not vote the stock)

b. Various government controlled airlines

c. Travel, tourist and trade promotion agencies

d. Canada Development Corporation

e. Others? (ENI? etc.)

8. Application of Reporting Requirements to Foreign Governments

   a. Would existing reporting requirements (e.g. 15 CFR Section 803) apply to governments?

   b. Any special problems in this regard

9. Special problems associated with having U.S. private firms controlled by foreign governments

   a. e.g. decisions re the firm made for non-economic reasons (but Cf rights of minority shareholders).

10. Aspects of "unfair competition if U.S. firms have to compete against subsidized government controlled corporations.

11. Congressional Reaction and Anticipated Congressional Problems.

    a. List of key Congressmen who have voiced concern re investment from oil producing nations.

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A SUMMARY OF EXISTING REGULATION
OF FOREIGN INVESTMENT IN THE UNITED STATES

a. Restrictions on foreign investment in various sectors of the U.S. economy.

There are numberous minor restrictions at the federal and state level affecting foreign investment in the U.S. Some of these are quite specific, as on domestic air transport or coastwise shipping, simply affecting the particular industry involved. A few, however, may have impacts far beyond the particular industry restricted. For example, restrictions on the operations of foreign banks may affect the attractiveness of a whole range of investments as perceived by foreigners.

The Commerce Department lists three reasons for the restrictions -- (1) defense implications, (2) the fiduciary nature of some investments; and (3) exploitation of certain natural resources has historically involved some degree of restrictions on aliens. However, there are several minor restrictions which do not seem to fit this categorization.

The major areas of restriction are listed below:

Communications -- Ownership of more than 25% of a domestic radio company by foreigners is prohibited.

Transportation -- Domestic air transportation is restricted to U.S. airlines, except for certain rights negotiated bilaterally with foreign airlines. Coastwise and fresh-water shipping is also reserved to U.S. corporations. Aliens may own controlling interest in fishing or international shipping firms, but are not entitled to construction or operating differential subsidies unless a majority of the stock is owned by U. S. citizens.

Power -- Aliens/and foreign controlled corporations may not obtain licenses to operate facilities for the utilization or production of atomic energy. Only domestic corporations or U.S. citizens may develop water power sites on navigable streams, although such domestic corporations may be controlled by foreigners.

Banking-- Foreign banking operations can take several forms including branch (oerates with parent name and resources), agency (like branch, but cannot accept deposits), subsidiary (separate capital structure, resources, etc., incorporated in U.S. eligible for FDIC and subject to both state and federal regulation), and representative office (performs no banking functions; exempt from supervisions). At present New York, California, Illinois, Alaska, Massachusetts, Oregon and the Virgin Islands permit extensive foreign banking activity aside from representative offices.

Federal restrictions are few, aside from reporting requirements. Foreign banks have chosen not to be members of the Federal Reserve System, and thus are not regulated by it, even though as large as many members. banks can also have branches in more than one state, a privilege not allowed U.S. banks.

Land Ownership-- Some states have alws restricting alien ownership of land which restricts both agriculture and mining in those states. Aliens may not acquire or exploit mineral lands owned by the Federal Government, except that where federal lands are subject to exploitation by citizens (such as coal, oil, gas, and other minerals), aliens may obtain interests in leases of mineral lands through control of domestic corporation entitled to hold such leases, if their country allows reciprocal rights to U.S. citizens.

Outright Prohibitions-- The recent CDC-Texas Gulf case illustrates that some states may have statutes on the books prohibiting foreign corporations altogether. The Foreign Assets Controls Regulations, administered by the Treasury Department prohibit any unlicensed new investment by North Korean nationals and such licenses are not now being granted.

Price Controls--Federal restrictions on prices, profits and dividends may have an inhibiting effect on foreign investment generally or in a particular industry.

Pollution Laws-- If regulations on pollution reduction are implemented with respect to a particular industry or process it may raise the cost of production in the U.S. and make it a less attractive place in which to invest.

b. Antitrust legislation

The antitrust laws are applied equally to both U.S. and foreign corporations in order to preserve competitive market structures and to forbid specific anti-competitive practices. It is argued that by maintaining a competitive market, such laws do not discourage foreign investment in the U.S. but, rather, make the U.S. more attractive than other countries for the international investor. Admittedly antitrust laws may restrict certain foreign investment. For example acquisition of a U.S. company may be the easiest form of entry into the U.S., but the antitrust laws may prevent the particular acquisition because of its effect on actual or potential competition. Such restrictions would, in such a case, either prevent foreign investment or direct it to a new construction or other non-takeover investment.

Section 7 of the Clayton Act is the principal statute which provides safeguards against further industrial concentration in the United States. Section 7 prohibits any merger or acquisition which may tend substantially lessen competition or to create a monopoly in any line of commerce in any section of the United States under this statute. Foreign direct investment is subject to antitrust scrutiny when such investment involves a purchase, merger, or a joint venture with an existing American firm.

The antitrust laws are applicable in the following situations: the merger of actual competitors in the United States market; the merger of potential competitors in the United States market; joint ventures between actual competitors in the United States market; and joint ventures between potential competitors in the United States market. Relevant competition includes not only competition between firms where production facilities are located within the United States but also competition between such firms and firms where production facilities are located abroad, that is to say exporters to the United States. A merger between an important exporter to the United States and a significant United States producer will be treated much in the same way as would the merger of two United States producers with corresponding market shares.

In the context of foreign commerce, the importance of the concept of potential competition is somewhat greater than in the purely domestic context. Factors such as tariff rates, governmental import and export barriers and exchange rates have a major effect in determining whether or not a particular foreign firm can compete in the United States market.

In proposed mergers between United States companies and foreign firms, the factual determination of whether the two companies are substantial, actual or potential competitors in the United States market, depends on various criteria -- such as whether there is objective evidence that the foreign company would have entered the United States market by de novo investment in new facilities or acquiring another firm or partner; how soon such entry might reasonably be expected; whether the market position of a large American company may be further entrenched by the acquisition and the like.

In addition to mergers involving actual or potential horizontal competitors the amalgamation of firms involving firms in a buyer-seller relationship, so-called vertical acquisitions may raise antitrust objections. An example is purchase of a United States manufacturer by a foreign supplier of raw materials. The possiblehazard to competittion of such an arrangement is that other domestic companies may lose a source of raw materials. The recent tendency for certain foreign raw material production to come under the ownership of firms, generally state owned that are avowed collusive oligopolists might provide an incentive for these foreign firms to attempt to enhance their market power by such vertical acquisitions of United States firms. Section 7 controls such mergers euqally with horizontal mergers.

The basic factors affecting the legality of joint ventures are the same as those affecting the legality of mergers. Joint ventures with domestic firms may sometimes provide the only means for foreign firms to enter markets in the United States. However, joint ventures can have an adverse effect on American domestic markets. For example, joint ventures in which the foreign firm is removed as a potential competitor present substantial antitrust objections*/

A recent case in the foreign direct investment and joint venture area will show how the above-described policy is put into effect. In the 1969 BP-Sohio merger case**/

*/ See, e.g., United Statesv. Penn-Olin Chemical, 378 U.S. 158 (1964, a case involving domestic firms only, but which describes the anticompetitive effects of such arrangements.

**/ U.S. v. British Petroleum Co., Civ. No. 69-954 (N.D. Ohio 1969) settled by consent decree, 1970 Trade Cases Par. 72,988.

BP, already a major petroleum marketer on the East Coast, acquired Sohio which had about 30 percent of the Ohio market. The Department of Justice objected to the merger on the grounds that BP was a potential entrant into Ohio, Sohio's primary market, and the merger would foreclose an independent entry into that market. The case was settled by a consent decree under which the merger was allowed to proceed provided that Sohio divested itself, by sale or exchange for stations in other parts of the country, of stations handling a total of 400 million gallons of fuel per year in the Ohio market. This case indicates the Department of Justice will challenge acquisitions when a major foreign firm, an actual or potential competitor in the United States market, merges or enters into a joint venture with a major United States firm in a concentrated United States market and the effect is to foreclose independent entry or expansion of the foreign firm.

With respect to the second objective of the antitrust laws in prohibiting anticompetitive practices, foreign firms which invest in the U.S. (whether de novo investment in new facilities or purchase of existing facilities from other firms) are also subject to U.S. standards both concerning monopolizing under Section 2 of the Sherman Act and concerning price fixing, group boycotts, market allocation and the like under Section 1 of the Act.

Should a foreign firm alone control a sufficiently high percentage of the U.S. market, or should a foreign firm engage in conduct with its competitors which amounts to express collusion on prices, division of markets, or group boycotts, then the Sherman Act provisions would be applied with equal impact on the foreign and domestically owned companies involved.

A valuable tool for foreign firms who contemplate an investment in the United States by purchase or merger of an existing firm is the Business Review Procedure of the Antitrust Division (28 C.F.R. Sec. 50.6) whereby the Division will state its present enforcement intentions to proposed business conduct, such as a merger or purchase of an American firm. Under this procedure, businessmen may inform the Division of proposed domestic or foreign activities, alone or jointly with other firms and receive a statement of the Division's enforcement intentions with respect to their specific proposal. Firms may, of course, if they wish, make any purchase agreement or major outflow of funds dependent on receiving information via the Business Review Procedure from the Division on its present enforcement intentions, based upon the material submitted by the firms seeking review.

c. Securities and Exchange Commission legislation and regulations

Our securities laws and practices are generally more rigorous than those in many foreign countries and foreigners in certain cases may consider our system burdensome. However, they do not specifically discriminate against foreign investors or issuers. In fact, in applying the securities laws the SEC has tended to accomodate foreign investors through exemptions from and modification of certain provisions of the laws. Our standards of disclosure and fair practice and our record of enforcement may be important factors in attracting foreign capital which more than offset whatever impediments they create. Only the prohibition of foreign membership on the New York and American stock exchanges may serve as a real impediment, by raising the cost of operations to foreign brokers and dealers.

SEC Rules and Policies

If a foreign direct investment project is partly dependent on U.S. sources of financing, the foreign issuer-investor would have to comply with the provisions of the U.S. securities laws. Certain types of transactions (e.g. commercial bank loans and private placements) would be exempt from the laws; however, if the investor wishes to raise funds from an offering of securities to the public, the issue in most cases must be registered under the Securities Act of 1933.

Upon completion of a public offering, the issuer would be subject to the reporting requirements of the Securities Exchange Act of 1934. Section 13(d) of the Securities Exchange Act of 1934 requires an investor acquiring more than 5% of the beneficial ownership of a class of securities registered under Section 12 (which applies to most public companies) to file with the Securities and Exchange Commission the name and occupation of the purchaser, the source of funds employed, the purpose of the transaction and other pertinent data. Section 14 D requires an investor intending to make a tender offer or take-over bid for more than 5% of the shares of a company to file the information called for on Schedule 13D with the SEC prior to commencing the tender offer. Section 16 calls for investors owning beneficially more than 10% of a public company and "insiders" (e.g. directors or officers) to file with the SEC a statement of the amount of securities owned and to file an updated statement each time the amount of shares owned changes. Furthermore, 10% owners and insiders of a company are liable to pay to the company any profit earned on certain purchases and sales which take place within a six month period.

These acts often call for more disclosure than foreigners are accustomed to providing. Furthermore, the form and content of the financial statements, as well as the requirement for independent audits, can present foreign issuers with difficult problems. The Commission has proved willing in the past to accomodate foreign issuers as to the nature of information disclosed and to permit reconciliation, rather than reconstruction, of accounting data. The U.S. laws apply even if a substantial portion of the offering is sold to foreigners. It is therefore, possible that the need to register and meet our disclosure and reporting rules may discourage some foreign companies from dealing in the U.S. capital market.

Membership on the New York and American Stock Exchanges

One possible impediment to foreign investment in the U.S. financial services industry exists in the rules of the New York and American Stock Exchanges, which do not permit membership by foreigners. Since the SEC has not disapproved of these rules, they are, in a sense, an extension of the federal securities laws. Foreigners are not prohibited from establishing a U.S. based brokerage or investment banking business, which can become a member of the National Association of Security Dealers, Inc. (NASD) and participate in underwritings and in brokerage transactions off the New York and American exchanges. However, such a dealer generally must work through a member should it seek to execute brokerage transactions in securities listed on either exchange and pay a commission to the member firm.

The question of exchange membership or access by foreign brokers is being considered currently by the SEC in connection with a review of exchange membership and commissions charged by exchange members to non-member brokers. The Commission's Rule 19b-2 permits membership to brokerage subsidiaries of institutions if 80% of their exchange transactions are conducted with or for the public (i.e. non-affiliated persons). This rule might effectively serve to restrict the operation of foreign members of all exchanges if the foreign parent of a U.S. broker were considered an affiliated person.

The impact of foreign membership on the level of foreign portfolio investment is difficult to measure. To the degree that the restrictions of the New York and American stock exchanges against foreign broker membership lead to higher commission rates for certain foreign investors, these restrictions could act as a barrier to portfolio investment. Foreign brokers might argue that membership on the NYSE and AMEX would increase their incentive to solicit transactions in securities listed on those exchanges.

The Glass--Steagall Act

The Glass Steagall Act prohibits commercial banks from underwriting and dealing in securities (excluding certain tax-free state and local government obligations). Since many foreign financial institutions are both commercial and investment banks as well as brokers the Glass-Steagall Act could be considered an impediment to the extension of their typical business to the U.S. market.

State and Local Securities Laws as Impediments

To the degree SEC regulations applicable to public offerings in the U.S. act as an impediment to foreign direct investment, state "blue sky" registration laws can create an additional, possibly greater, impediment. Although these laws vary from state to state, a model act has been adopted by most states which presents few problems to established companies. Furthermore, offerings by companies with securities listed on major national securities exchanges in the U.S. are generally exempted from qualification under most state laws. However, this exemption does not eliminate the issuer's potential liability for any violation of the laws of states in which the offering is made.

In the case of non-exempt issuers, a number of states attempt to evaluate securities and prohibit offerings which are considered too speculative or the terms of which are deemed "unfair". The standards of evaluation are often quite subjective, and it is possible that foreign issuers or their U.S. subsidiaries might encounter reluctance on the part of state authorities even though the specific statutory requirements are met.

Registration is only required in the states in which the securities are offered. Small offerings can usually be made in a relatively small number of states, allowing the issuer to avoid the more burdensome problems.

Broker-dealers and their individual registered representatives must be registered in the states in which they wish to conduct business, as well as with the NASD. There are no specific restrictions on foreign controlled firms at the state level so long as they comply with the laws applicable to U.S. owned broker-dealers.

Reduction of SEC impediments

The impediments to foreign portfolio investment created by SEC reporting requirements do not involve any discrimination between domestic and foreign investment and are unlikely to be eliminated. In fact, a bill has recently been introduced in the Senate (S. 2234) to require large institutional investors to report holdings and transactions above a certain size. Foreign institutions would presumably be covered by this legislation, which at the least would add to their record keeping and reporting burden.

The joint legislative proposal of the SEC and Treasury to create a vehicle known as the Foreign Portfolio Sales Corporation (FPSC) to attract foreign investors to U.S. registered funds is intended to eliminate some of the barriers to investment by foreigners in this marketplace. At this time, most foreign investors are subject to U.S. taxes and other inconveniences if they purchase U.S. registered securities or mutual funds. The FPSC is designed to offer foreign investors a fund registered with the SEC which would provide the tax advantages and other conveniences currently available only through offshore mutual funds.

d. Taxes and foreign investment in the U.S.

Summary of Present Tax Treatment

U.S. taxation of foreign individuals and foreign legal entities ("corporations") on their U.S. direct or portfolio investment depends upon the relationship of the foreign taxpayer to the U.S. and the geographic source and nature of his income.

Source of income The Internal Revenue Code (IRC) divides income into two clases: U.S. source income and foreign source income. If income is partially from within the U.S. and partially from without, it must be allocated between the two sources. Generally, U.S. source income includes: (1) income from personal services performed in the U.S.; (2) interest paid by a U.S. citizen, resident, corporation, state or local public entity and a pro rata portion of interest paid by certain foreign corporations which derive a substantial portion of their gross income from U.S. sources; and (3) dividends paid by U.S. corporations and a pro rata portion of dividends paid by those foreign corporations which have substantial U.S. source business income.

Nature of Income. Treatment of income also varies according to its nature:

1. Passive investment income, e.g., dividends, interest, rents, and royalties, is subject to a withholding tax at source of 30% (or lower treaty rate) on gross income; and

2. Business income "effectively connected with the conduct of a trade or business in the U.S." (including income described in paragraph 1) is taxed at progressive rates on taxable income. The "effectively connected" concept was added to the Code in 1966 to segregate business income taxed at progressive rates from investment income taxed at the 30% withholding rate. Among the factors considered are whether the income is derived from assets used in the trade or business, whether the activities of the trade or business were a material factor in the realization of the income and whether the asset or the income was financially accounted for through the trade or business.

Summary of Current Treatment. Putting these variables together, U.S. income taxation of foreign individuals and corporations can be roughly summarized as follows:

(1) Resident alien individuals are taxed at progressive rates both on their U.S. and foreign source taxable income. just as are U.S. citizens.

(2) Non-resident alien individuals are taxed at 30% (or lower treaty rate) on gross U.S. source investment income and taxed at progressive rates on U.S. and foreign source taxable income effectively connected with a trade or business conducted in the U.S. In addition, if a non-resident alien is physically present in the U.S. for more than 183 days during a taxable period, his net capital gains from U.S. sources not "effectively connected" are taxed at 30% (or lower treaty rate). Such individuals are not taxed on foreign source investment income, nor on foreign source income not effectively connected with the conduct of a trade or business in the U.S.

(3) Foreign corporations engaged in trade or business in the U.S. are taxed in the same manner as U.S. corporations on their U.S. source income that is effectively connected with such trade or business, as well as upon certain categories of foreign source income effectively connected with the U.S. trade or business. Non-effectively connected U.S. investment income is taxed as described in para. 4.

(4) Foreign corporations not engaged in trade or business in the U.S. are taxed at 30% (or lower treaty rate) on gross U.S. source investment income. Since the corporation has no U.S. trade or business, by definition it will not have any U.S. source business income or effectively connected foreign source income. Such corporations are not taxed by the U.S. on their foreign source investment income.

<u>Gift Tax</u>. U.S. gift tax is paid by resident aliens in the same manner as U.S. citizens. Gifts of intangible property by non-resident aliens are exempt from the tax. Corporations are not subject to the gift tax provisions.

<u>Foreign Investors Tax Act of 1966</u>. The present status of U.S. treatment of foreign investors is largely the product of past attempts to remove restraints on such investment. The Revenue Act of 1936 liberalized U.S. taxation of capital gains realized in the U.S. by certain foreign individuals and corporations. In 1963 President Kennedy appointed a task force to examine means of encouraging increased foreign investment in the U.S. and increased foreign financing by U.S. corporations operating abroad. A report ("Fowler Report") was issued by this task force in 1964 containing thirty-nine recommendations on how to accomplish those objectives.

Legislation incorporating these recommendations, introduced in March, 1965, underwent extensive modification by the Ways and Means Committee in which the focus changed from encouraging foreign investment to providing equitable treatment of such investment. The resulting "Foreign Investors Tax Act of 1966" (FITA) enacted all the recommendations contained in the Fowler Report except complete exemption from U.S. estate tax of all intangible personal property of non-resident alien decedents located in the U.S. Instead, FITA substantially reduced the tax rates applicable to foreign decedents and increased the available exemption from $2,000 to $30,000. In addition, FITA extended U.S. taxation for the first time to certain classes of foreign source income of non-resident aliens and foreign corporations if that income is effectively connected with the conduct of a trade or business in the U.S.

Tax Treaties. In addition to legislation, treaties have a major impact on the tax treatment of foreign investment in the U.S. The tendency of recent treaties negotiated by the U.S. has been to incorporate the statutory changes effected by FITA and to provide for a mutual reduction of withholding rates.

Withholding Taxes on Dividends.

Basic Rate. Current U.S. laws impose a 30% withholding tax on dividends paid to foreign investors. This tax is reduced in the case of about 30 countries that have tax treaties with the United States. In most cases the reduction is to 15% for portfolio investors and to 5% for intercompany dividend payments on direct investment.

Effect of Removal of Tax. The effect of this tax on the level and type of investment in the U.S. is by no means clear. Although any tax on the return on investment could be assumed to be more of a deterrant than no tax at all several factors serve to reduce the amount of deterrance. In addition to the fact that the tax is already halved by treaties, many countries have tax credit provisions allowing these taxes to be subtracted from the investor's tax liability to his home country. Removal of the withholding tax in these instances might have no effect on the level of investment, but only transfer tax revenues from the U.S. government to a foreign government. Furthermore, several nations have other forms of restriction on investment abroad, that could limit the increase in foreign investment even if the tax were removed.

Although branches of foreign corporations do not pay the withholding tax on repatriated earnings, most direct investment in the U.S. has taken the form of subsidiaries which are subject to the tax. This suggests that the tax has not served as a significant enough deterrant in this case to offset other advantages of the subsidiary form of organization. In addition, investment in the U.S. may now be so attractive as a result of the devaluations that the dividend withholding tax has little deterrant effect. Lastly, it should be noted that, as a result of the different treatment of portfolio and direct investment in most tax treaties, removal of the tax would have a greater incentive effect on portfolio investment.

Revenue Loss. If the tax were removed, revenues currently collected would be lost. However, if investment did increase, other taxes on the additional investment would provide some offsetting revenues. Most important, if the removal of the withholding tax were reciprocal instead of unilateral, the U.S. government might collect revenues on the investments of U.S. corporations abroad which are now paid to foreign governments and credited against U.S. taxes.

Tax Reform Abroad. Canada, France, the U.K., Germany and other countries are integrating their corporate and personal income taxes by providing tax credits (or lower rates) on income distributed to domestic shareholders. This reduces the aggregate burden on investments by their residents in their domestic corporations relative to investments in the U.S. The withholding tax represents an additional differential yield between these systems, and accentuates the undesirability of investing in the U.S..

Withholding Taxes on Interest.

The statutory tax of 30% on interest payments to foreigners is reduced to 15% or 0% (in about half the cases) in treaties with perhaps 30 countries. U.S. policy has been to try to negotiate a zero rate whenever possible, using the argument that the creditor country has foregone the use of the funds at home and should at least collect tax revenues on the interest paid on such funds.

At present only $21 million in taxes are collected which probably reflects the ease with which the taxes can be avoided. Virtually all borrowing in the Eurobond market is arranged to be free of withholding taxes, by use of bearer form bonds or foreign financing subsidiaries.

A subsidiary problem relates to the source rule (now scheduled to expire January 1, 1975) exempting from U.S. withholding interest paid on deposits with U.S. banks or domestic branches of foreign banks. Congress failed to enact a complete exemption in 1966 because it felt that domestic banks should not be placed in a more advantageous position than other domestic parties attempting to attract foreign loans and that foreign depositors should not be preferred over domestic depositors who were subject to tax on interest income. U.S. banks argued that unless the interest were exempt they could not successfully compete with banks in foreign countries which do not assess a withholding tax on such interest payments. They therefore advocate the indefinite extention of this exemption.

Estate Taxes

Estates of resident aliens are taxed on all property wherever located, just as are estates of U.S. citizens. Estates of non-resident alien individuals are taxed only on property deemed situated in the U.S. Stock and debt obligations of a U.S. individual, corporation or state are deemed situated in the U.S. regardless of the physical location of the certificate or the note or the non-resident alien at death. After January 1, 1975, deposits with U.S. banks or domestic branches of foreign banks will also be deemed situated in the U.S.

Exemption of intangible property held by non-resident aliens from U.S. estate tax was one recommendation of the Fowler report which the Congress failed to adopt in 1966. Congress instead lowered the applicable tax rates and increased the available exemption to place non-resident alien decedents in the same basic position as resident decedents. Congress apparently felt that such non-resident aliens should not be completely free of U.S. estate tax since many other countries do not offer a similar exemption, on the basis of equity with U.S. residents, and the possibility that the tax might produce significant revenue. (It actually produces very little revenue). On the other hand, the estate tax can easily be avoided by incorporating the U.S. holdings in a foreign corporation and it thus becomes a trap for the unwary or unsophisticated foreign investor.

Capital Gains.

In general no capital gains tax is imposed on a foreign investor not engaged in a trade or business in the United States. However, if the foreign individual is physically present in the United States for more than 183 days during a taxable period he is liable for the tax.

The Interest Equilization Tax

In the past the interest equalization tax (I.E.T.) which was abolished in Jan., 1974 constituted a prohibitive tariff on U.S. purchases of foreign securities. It was directed against capital outflows, but could affect inflows if U.S. financing was part of the investment decision. When the act was extended extended early in 1973 it was amended to provide an Inward Direct Investment Exception. This provide that if more than 50% of a direct investment by a foreign entity comes from abroad, the foreign entity's securities were exempt from the tax. With this exemption, the tax probably did not discourage investment in the U.S. to any great degree.

State Taxes

State taxes, including corporate income and franchise taxes, personal income taxes, excise taxes, and property taxes may influence the size, type and location of foreign investment. Since state tax rates are substantially less than federal rates, they probably do not constitute a major overall deterrant. However, bilateral tax treaties do not reduce or eliminate these taxes.

State taxes have little effect on the portfolio investments of non-resident alien individuals or foreign corporations since such taxes usually would not apply to dividends or interest paid to those foreign investors or to any gains realized upon final disposition of the securities.

The situation confronting direct investors is more complicated. In addition to the tax rates themselves, investors must consider the basis on which a state premises its taxing jurisdiction and the manner in which it determines the amount of income subject to such jurisdiction. These will affect the amount of tax paid and the possibility of double or triple taxation due to varying definitions from state to state. The variety and complexity of such laws may cause minor discouragement to potential investors.

Legislation is currently before Congress which would standardize some jurisdictional concepts and apportionment rules. Although such legislation would help firms doing business in more than one state, it will probably not affect misapportionment which can result from divergent state and foreign source rules.

Other Tax Issues

1. Elimination of U.S. income tax on dividends and interest paid by those foreign corporations which derive more than 50% of their gross income from income effectively connected with the conduct of a trade or business in the U.S. Congress failed to take this step in 1966 because it felt it was undesirable to place foreign corporations in a more advantageous tax position than domestic

corporations. Conversely, the rules are complex, generate little revenue and may cause a foreign corporate investor to be wary of increasing its U.S. activities. In addition, since the tests are based upon gross income, they can be avoided by engaging in foreign activities which generate substantial gross income but little net income.

2. Liberalization of the provisions excluding "trading in securities or commodities" from the term "trade or business within the U.S." Presently, a foreign taxpayer is exempted even though he or an employee is present in the U.S. or discretionary authority is granted to a resident agent, unless the foreign taxpayer is a "dealer" in stocks or securities or is a foreign corporation (other than certain corporations which are or would be personal holding companies) whose principal business is trading in stock and securities for its own account and has its principal office in the U.S. The problem of determining when an individual is a "dealer" is difficult factually and in this instance the worldwide activities of the foreigner must be assessed. To the extent a foreign individual is unsure of his status and cannot take advantage of an independent agent, he may be deterred from U.S. investment.

3. Domestic mutual funds for foreigners. Legislation was recently proposed by an interagency task force to amend the securities and tax laws to encourage the establishment of domestic mutual funds, regulated by the SEC, to be sold exclusively to foreigners and which would have tax benefits for foreigners equivalent to those offered by off-shore mutual funds investing in the U.S.

e. Visa Requirements

Nonimmigrants

Any nonimmigrant alien in the United States under any of the 13 existing visa classifications may, unless precluded from doing so because of restrictions in the foreign exchange area or because of actions or policies of his government, invest in a commercial or other type lawful venture. However, he may not, in the absence of official permission granted by the Immigration and Naturalization Service, engage in gainful employment or remain beyond the period of time authorized by that Service.

Of the several nonimmigrant classifications, four contain what might be described as built-in authorization to work for remuneration here, and these are: treaty trader and treaty investor, temporary workers, and intra-company transferee. The first two mentioned classifications were designed specifically to provide for those aliens desirous of investing here, or to otherwise engage in substantial business ventures. The latter mentioned is realtively new having been established by legislation in 1970. So long as aliens in any of these four classifications maintain status with approval of the Immigration and Naturalization Service, there is no prescribed limit on the total length of time they may be permitted to remain in the United States.

There is one other nonimmigrant classification that is available to the foreign businessman who wishes to invest capital in the United States, and that is the temporary visitor for business. Foreign businessmen admitted in this classification may not engage in gainful employment, however, nor may they remain longer than six months in the absence of Immigration and Naturalization Service authorized extensions to stay.

Immigrants

A foreign businessman who intends to reside in the United States for an indefinite period or permanently in connection with his investment and who cannot qualify for any of the nonimmigrant classifications described must obtain an immigrant visa. In applying for an immigrant visa, he may meet the labor certification requirement of the Immigration and Naturalization Act by establishing that he "... is seeking to enter the United States for the purpose of engaging in a commercial or agricultural enterprise in which he has invested, or is actively in the process of investing, capital totalling at least $10,000, and who establishes that he has had at least one year's experience or training qualifying him to engage in such enterprise;." Also, a labor certification will usually be granted by the Department of Labor on an intracompany transfer basis for key personnel who have been employed by the firm abroad for a substantial period of time. Once this requirement has been met, he will then complete the normal procedural requirements and, if a visa number is available for his use, will receive an immigrant visa without delay.

There are limitations imposed by law on the number of immigrant visas which may be issued each year -- 170,000 to persons born in the Eastern Hemisphere; 120,000 to persons born in independent countries of the Western Hemisphere. Because the demand for immigrant visas is variable, there may be a waiting period before an immigrant visa number will become available for a qualified applicant. A foreign businessman intending to immigrate to the United States in connection with his investment in this country must consult the nearest American Embassy or Consulate for precise details of the process of applying for, and obtaining, an immigrant visa and for information concerning the waiting period, if any, which he may face before a visa number can be made available for his use.

f. Incentives and promotional efforts to attract foreign investment

A desire to preserve or gain a share of the large market of the U.S. (both number of people and dollars per person) the availability of skilled labor, an extensive capital market and access to new technologies, will be major determinants of a foreigner's decision to invest in the U.S. These are as much influenced by overall fiscal, monetary and regulatory policies as by any specific state or federal measures to attract foreign investments.

In addition, most specific investment incentives are aimed at domestic and foreign investors alike. They take the form of loans at subsidized rates, loan guarantees, feasibility studies, and other assistance in locating and financing plant construction. These may well influence where investments are made (e.g. New Jersey or Florida), but their effect on a decision whether or not to invest in the U.S. is probably much less. In addition, if such investment have the effect of substituting subsidized local capital for foreign capital they may lose some of their desirable aspects. Both the federal and several state governments have promotional programs, as described below, but these are primarily informational.

1. Federal incentives and promotions

There are no direct financial or other incentives offered by the Federal Government to foreign investors. There are a number of forms of assistance offered to all investors (domestic and foreign), but to date none of these has been widely utilized by foreign investors. EDA subsidizes and guarantees loans and provides technical assistance to firms investing in designated poverty areas. SBA also provides loans and guarantees. Indirectly, federal assistance is channeled through states and local communities in the form of grants for water and sewer lines, labor training, and other industrial development schemes.

The Department of Commerce runs an "Invest in USA" program to increase the awareness of foreign potential investors in the many opportunities that exist in the United States to publicize our "open door" policy, to focus attention on the most advantageous areas for plant location, and to enlist the aid of state or local agencies in bringing the investment to fruition. Activities are planned, initiated and coordinated by Commerce's Office of International Finance and Investment (OIFI/BIC). Most of these efforts are directed overseas where the programs of the Industrial Development Attaches' (IDAs) in Brussels and Paris are extended by the Commercial Officers (COs) throughout Europe. The IDAs and COs work closely with foreign government agencies, banks, chambers of commerce, industrial groups and individual firms on an active program of speeches, conferences and consultations. Activites in Canada, Japan and other countries are coordinate directly by OIFI.

Within the U.S., the Investment Services Division (ISD/OIFI) conducts a complementary program of promotion directed towards development groups of the various states, regions and localities to acquaint them with the advantages of foreign investment, where necessary, and to stimulate and guide their promotional efforts. ISD also prepares and distributes a variety of information and statistical publications for the use of potential investors.

A major effort of ISD is the planning and coordination of overseas promotional activities in collaboration with State, regional and industrial groups. These activities include investment missions, investment seminars and overseas trips for consultation with specific companies.

2. State incentives and promotions

State incentives to direct investors vary considerably from state to state, and are continually in flux as new legislation is passed. In addition, even though an incentive is shown as available, there is no guarantee that it will be granted in every case. All the incentives apply to domestic and foreign investors alike. The range of assistance includes:

a. Financial assistance: Loan guarantees for equipment (10 states), and for building construction (12 states) outright loans for machinery and equipment (12 states), for building construction (16 states). Industrial Bond Financing; general obligation (18 states), and revenue bond financing (45 states), State sponsored development credit corporation (29 states), State sponsored industrial development authority (29 states), State financing aid for existing plant expansions (26 states).

b. Tax incentives: Accelerated depreciation of industrial equipment (15); corporate income tax exemption (17); tax incentive for compliance with pollution control laws (27); inventory tax exemption on goods in transit (freeport)(38); personal income tax exemption (18); sales use tax exemption on new equipment (25); tax exemption or moratorium on land, capital

c. General Data Basic to Plant Location: Data on communities in comparable form (38); site studies (44); conduct or assemble research studies on state and areas (46) climate (47), civil characteristics (47); financing (46) labor (48), legislation and taxes (48); markets (4); data on plant location factors for individual communities (47); power and fuels (47); water and waster (47), transportation (48), etc.

d. Special services to encourage industrial development: State, city or country providing free land for industry (14) state, city or country-owned industrial park sites (41) state programs to promote research and development (32); university research and development facilities available to industry (47) state and/or university to conduct feasibility studies to attract or assist new industry (47); state-supported training of industrial employees (50); state help in bidding on federal procurement contracts (30); etc.

In addition to these incentives available to both domestic and foreign investors, many states have undertaken promotional activities aimed specifically at foreign investors. Most have supplied industrial development literature to embassies and commercial libraries abroad. Several states have established overseas offices to stimulate trade and attract investment. New York, Illinois, Virginia and Michigan have offices in Europe while Texas, Alaska, Michigan and Illinois have office in the Far East. Alabama, Georgia, Pennsylvania and Maryland are planning overseas offices for the very near future while other states are contemplating them. A large number of states have port authority offices in Europe and Japan, and others maintain working relationships with consultants and banks.

Over 30 States have created internationaldivisions within their state development offices to attract foreign investment and stimulate exports. NASDA sponsors conferences and seminars to expose state officialsto spokesmen and information from the federal and private sectors which will better prepare them for their roles.

With the advent of "Invest in the USA" conferences, several states have deemphasized reliance on individual overseas offices. The number of state participating in the conferences has risen from 17 in Munich (1971) to 27 in Dusseldorf/Stockholm (1972) to 36 in Tokyo/Osada (1973).

3. Issues of federal/state coordination: Over the years there has been excellent cooperation and teamwork between

the Department of Commerce and the individual states, with the National Association of State Development Agencies (NASDA) serving as both middleman and catalyst. The joint efforts of these groups have successfully served the common objective to attract foreign direct investment. It is anticipated that this cooperative effort will continue.

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UNITED STATES MISSION
TO THE ORGANIZATION FOR
ECONOMIC COOPERATION AND DEVELOPMENT

April 25, 1974

19, RUE DE FRANQUEVILLE
PARIS 16e, FRANCE

Mr. Helmut Abramowski
Assistant Secretary-General
Organization for Economic
Cooperation and Development
2, rue Andre-Pascal
Paris 16eme

Dear Mr. Abramowski:

In response to the request made during the Third Ad Hoc Meeting of Experts on Guidelines and Consultation Procedures in Matters Pertaining to International Investment, I have the honor to send you the attached note containing a listing of United States laws and administrative practices which distinguish between resident enterprises that are foreign-controlled and those controlled by U.S. citizens.

Sincerely yours,

John W. Tanner
John W. Tanner
Financial Advisor

JWT/ba
Attachment

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Exceptions to National Treatment

(Note by U.S. Experts)

The attached paper contains a preliminary and general description of United States federal laws and administrative practices which grant significantly less favorable treatment to foreign controlled enterprises in the United States than to enterprises controlled by U.S. citizens. The paper does not describe state laws or administrative practices. It also does not cover restrictions which are relatively inconsequential (e.g., alien registration requirements), which are based on generally accepted distinctions relating to residence but not nationality (e.g., withholding taxes on dividend payments to foreign but not domestic parent corporations), or which involve the migration of individuals. Because the main focus of the paper is on business activity, it does not describe limitations on alien participation in government positions or in certain amateur activities.

The paper does not address the question of whether the concept of the right of establishment covers both initial investments and subsequent second degree investments by foreign controlled enterprises. It does, however, describe restrictions which would prevent foreign controlled domestic enterprises from engaging in new activities. (These same restrictions generally would apply to new direct investment in a particular activity.)

Because there is as yet no agreed definition of "foreign control", the paper for analytical purposes focuses first on equity ownership as an element in a definition of "control", and then on participation in management (but not equity ownership) as a separate element in such a definition. Section I examines laws and practices which grant less favorable treatment to domestic enterprises in which foreign investors hold a controlling equity interest, while Section II examines laws which grant less favorable treatment because certain management positions are held by aliens. (The definitions of a "controlling " equity interest are quite varied, and details can be furnished if required.)

In some cases foreign investors may be subject to restrictions if they operate in the United States in branch form, while the same restrictions would not apply if they operated through a domestic corporation. The relevant laws are described in the third section of the paper. We wish to reserve judgment as to whether these restrictions would constitute a denial of national treatment, because organizing a domestic corporation usually can be done quickly and inexpensively.

The attached paper, finally, does not describe certain provisions of United States law and administrative practices which relate directly to national defense.

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I. General Restrictions on Foreign Controlled Enterprises

Foreign controlled enterprises operating in the United States, whether in branch or subsidiary form, may not:*

(a) engage in operations involving the utilization or production of atomic energy (42 USC 2133(d))

(b) own vessels which transport merchandise or passengers between U.S. ports, or which tow U.S. vessels carrying such merchandise or passengers between U.S. ports. (46 USC 802, 883, 888) There are exceptions to this general rule, one of which permits a foreign controlled U.S. manufacturing or mining company to engage in shipping activities related to its principal business. (46 USC 883-1)

(c) acquire rights of way for oil pipe-lines, or leases or interests therein for mining coal, oil or certain other minerals, on federal lands other than the outer continental shelf, if the foreign investor's home country does not permit such mineral leasing to U.S. controlled enterprises (30 USC 181, 185; 43 CFR 3300.1)

(d) engage in radio or television broadcasting, unless the Federal Communications Commission finds the grant of a license to be in the public interest (47 USC 310) (The FCC has granted licenses for broadcasting activities ancillary to another business of a foreign controlled enterprise.)

(e) acquire a controlling interest in a telegraph company (47 USC 222(d))

(f) acquire control of a company engaged in any phase of aeronautics, unless approval is granted by the Civil Aeronautics Board (49 USC 1301(1), (13); 78A(4); (1378(f))

(g) be issued permits for intra-United States air commerce or navigation (49 USC 1371, 1401(b), 1508)

(h) obtain special government loans for the financing or refinancing of the cost of purchasing, constructing or operating commercial fishing vessels or gear (16 USC 742(c)(7)

(i) sell obsolete vessels to the Secretary of Commerce in exchange for credit towards new vessels (46 USC 1160(b))

(j) receive a preferred ship mortgage (46 USC 922)

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*In certain cases foreign enterprises can acquire a minority interest in corporations engaging in the activities noted but certain management requirements may have to be met. (Cf. Sec. II)

(k) purchase vessels converted by the government for commercial use or surplus war-built vessels at a special statutory sales price (50 USC App. 1737, 1745).

(l) obtain special government emergency loans for agricultural purposes after a natural disaster (7 USC 1961) or government loans to individual farmers or ranchers to purchase and operate family farms (7 USC 1922, 1941)

(m) establish an Edge Act corporation to engage in international or foreign banking (12 USC 619)*

(n) purchase Overseas Private Investment Corporation insurance or guarantees (22 USC 2198(c))

(o) obtain construction-differential or operating-differential subsidies for vessel construction or operation (46 USC 1151 ff., 1171 ff., 802)

(p) acquire or charter, without the approval of the Secretary of Commerce, U.S. flag vessels, vessels owned by a U.S. citizen, or shipyard facilities (46 USC 835)

(q) acquire the controlling interest in corporations owning the vessels or facilities described in (p) above (46 USC 835)

(r) obtain war-risk insurance for aircraft (49 USC 1531, 1401)

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* In addition to its limitations on stock ownership by foreign enterprises, the Edge Act requires that all the directors of the corporation be United States citizens.

II. Management-related Restrictions on Foreign Enterprises

In certain cases a foreign controlled enterprise operating in the United States must meet certain requirements relating to management in order to engage in particular activities. The foreign investor, however, can continue to own all the equity in the enterprise, because the laws in question do not contain limitations relating to stock ownership. Unless these management requirements are met, foreign controlled enterprises may not:

(a) organize a national bank (all the directors must be United States citizens) (12 USC 72)

(b) engage in dredging or salvaging operations in U.S. waters. (To register a vessel to engage in these activities, the President or chief executive officer of a domestic corporation, and the chairman of its board, must be U.S. citizens, and foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum). (46 USC 316, 11)*

(c) fish in the territorial waters of the United States, land fish caught on the high seas, and, except for corporations of countries with traditional fishing rights), fish in the United States fishing zone. (See (b) above for the management requirements.) (16 USC 1081, 1091; 46 USC 231)*

(d) transport certain commodities procured by or financed for export by the United States government or an instrumentality thereof. (See (b) above for the management requirements.) There are certain statutory exceptions to this rule. (15 USC 616(a); 46 USC 1241)

(e) obtain certain types of vessel insurance. (See (b) above for the management requirements.) (46 USC 1281 ff.)

(f) obtain licenses to operate as customs-house brokers (19 USC 1641) (At least two of the officers must be U.S. citizens.)

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* To the extent that these activities involve the coast-wise trade, certain limitations on stock ownership would have to be met. (Cf. Sec. I)

III. Restrictions Applicable to Foreign Branches or Individuals

In certain cases the form of business organization chosen by a foreign controlled enterprise will determine whether it will be treated differently from an enterprise controlled by United States citizens. If a foreign controlled enterprise chooses to operate through a sole proprietorship or a branch office, rather than a corporation organized under the laws of one of the states, it may not:

(a) obtain licenses to construct dams, reservoirs, power houses, and transmission lines (16 USC 797(e))

(b) obtain licenses to develop and utilize geothermal steam and associated resources on federal lands (30 USC 1001 ff.).

(c) obtain certain rights of way, mining rights, leases, or other rights on federal lands (See generally 43 CFR Subchapters A & D)

These restrictions would not apply if the foreign controlled enterprise operated through a domestic subsidiary.

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In addition to restrictions previously noted, foreign citizens may not:

(a) act as officers and serve in certain other positions on certain vessels (Cf. 46 USC 221)

(b) function as operators in radio or television stations (47 USC 303(1))

(c) practise before the Tax Court or the Court of Claims (Tax Court Rules, 2; Court of Claims Rules, 201)

January 1974 11

STAFF REPORT ON RESTRICTIONS TO FOREIGN
INVESTMENT IN SPECIAL U. S. COMMERCIAL ACTIVITIES

In the United States, the qualifying, regulation and/or restriction of foreign companies and/or capital lie mainly within the jurisdiction of the 50 individual states. At the national level, foreign investors in the United States generally enjoy the same freedom as domestic investors. However, certain federal restrictions are applied to specific sectors of the economy because of national defense, natural resources or special trust considerations.

For each of the following listings, three subsections are provided:

A -- Cites and summarizes the relevant federal statute.

B -- Mentions the activity of the responsible federal agency(ies).

C. -- Provides, where available, additional comments on the effects and limitations of the provision.

Communications

A. The opportunity for foreign-owned enterprises to invest in the communications field (telephone, telegraph, radio and/or television) is sharply limited by a 1927 federal statute last amended in 1934, which prohibits foreign-owned or controlled corporations from receiving a license to operate an instrument for the transmission of communications. A corporation is considered foreign-owned if any director or officer is an alien, or if more than one-fifth of its capital stock is owned by aliens, a foreign government or a corporation organized under the laws of a foreign country. A corporation is generally considered foreign-controlled for purposes of this statute if it is directly or indirectly controlled by a corporation, at least one-fourth of whose capital stock is owned by foreign interests.

(Source: Title 47, U. S. Code Section 310 (1970))

B. All license applications are processed by the Federal Communications Commission.

C. At the time that an application for a license is filed with the FCC, the applicant must answer questions regarding the nationality of a corporation's owners, directors and officers. While there are many examples of corporations which have a foreign ownership of up to the 20% limit; e.g. a number of stations in Southern California and WPAT in Patterson, N. J., which is 20% owned by a Mexican national, there have been no known instances in which the limitations have been exceeded.

Of course, the law in no way constitutes a restriction to foreign interests in the manufacturing of items meeting FCC specifications such as radios, TVs, telephones, etc.

Transportation

I. Aviation

A. Foreign direct investment in the United States for the purpose of aircraft operation is also restricted. Eligibility to register aircraft in the United States is limited to:

1) individual American citizens;
2) partnerships in which all partners are American citizens;
3) corporations formed in United States in which at least two-thirds of the directors are American citizens and at least 75 percent of the stock is owned by American citizens.

Furthermore, the right to engage in cabotage (trade or transport between two points within the U. S.) is limited to domestically registered aircraft.

Under certain circumstances, however, foreign register aircraft may operate within the United States when the country of registration affords reciprocal privileges to aircraft registered in the United States. In these cases, a special permit must be obtained from the Civil Aeronautics Board. However, the foreign aircraft may not pick up persons, property, or mail within the United States to be transported to a destination within the United States.

(Source: Title 49, U. S. Code Section 1378 and 1401 (1970) Transportation)

B. The Civil Aeronautics Board handles the acquisition of "economic certificates" and "certificates of convenience and necessity," i.e. licenses to carry on economic activity.

The Federal Aviation Administration (DOT) is responsible for aircraft safety and registration.

C. There are two categories of air-freight forwarder licenses issued by the CAB - foreign air carrier and domestic air carrier. The right to carry on cabotage is the primary difference. It should be noted, however, that the cabotage restriction does not extend to goods or passengers whose points of origin or final destination is in another country.

Neither the CAB nor the FAA is aware of any exceptions to the stipulated limitations. In a recent case (Inter-American Air Freight Corp. v. CAB), a California corporation owned by German nationals was denied a domestic license but was granted a license as a foreign air carrier.

Answers to nationality questions on license and registration applications are assumed to be accurate, as alleged, unless there is evidence to the contrary. There are no records kept as to the degree of foreign ownership in corporations, but the degree of foreign ownership of domestic air companies is believed to be quite low.

Tangentially, the CAB generally also insists that foreign air carriers operating in the U. S. be owned and controlled by nationals of the country of registration. The only exception is that during World War II, concern that Germans would acquire interests in Latin American airlines led to the granting of permission for U. S. corporations to buy into Latin American air carrier corporations which could operate within the United States. Substantial holdings in several Latin American airlines are still owned by some American firms.

II. Coastal and Fresh Water Shipping

A. A second type of transportation activity restricted to United States citizens is coastal and fresh water shipping. Under the Jones Act of 1920, any shipping of freight or passengers between points in the United States or its territories must be done in vessels which were built and are registered in the United States and which are owned by United States citizens. This prohibition applies even when goods are shipped via a foreign port, and are thereby temporarily removed from U. S. waters. A vessel which is at any time registered in a foreign country permanently loses the U. S. shipping rights. Furthermore, any eligible vessel exceeding five hundred gross tons which is later rebuilt outside the United States is likewise restricted.

For vessels registered in foreign countries which grant reciprocal privileges to American vessels, a statutory exception permits intercoastal transportation of empty items, such as cargo vans, shipping tanks, barges, and the equipment used with them.

Like the aviation regulations, for a corporation to register a ship in the United States, the corporation's principal officers must be American citizens and 75% of the stock must be owned by citizens of the U. S.

The purpose of the cabotage restriction is to protect the American shipping industry, to provide employment for America's shipyard workers, and to improve and enhance the American Merchant Marine. More broadly, Congress hoped to assure that facilities in domestic shipyards would be adequate in times of war.

(Source: Volume 46, U. S. Code, Section 883 1970 (Shipping))

B. Enforcement of the cabotage laws falls under the jurisdiction of the U. S. Coast Guard (now DOT).

The U. S. Customs Service is the enforcing and licensing agency.

The Federal Maritime Commission is responsible for insurance, underwriting and subsidies.

C. The domestic unions and shipping companies are very effective watchdogs of the cabotage regulations. However, one example of a small number of specific exceptions is that of a Swedish built, American registered vessel which was allowed to carry on Seattle-Alaska trade, only after being legalized by an act of Congress passed for that vessel alone.

Natural Resources

I. Land

A. The law restricting alien ownership of public lands dates from an 1887 law which states that public land may be transferred or leased only to a) U. S. citizens or to persons having declared their intentions to become U. S. citizens, b) a partnership or an association, each of the members of which is a citizen of the U. S. or has declared an intention to become a citizen, and c) a corporation organized under the laws of the United States.

There is no limitation upon the percentage of foreign ownership which a domestically incorporated firm may have, provided that the country whose citizens own shares of the U. S. corporation grants reciprocal privilege to U. S. citizens. Where reciprocation is not extended, however, any such American corporation must be majority owned by U. S. citizens.

(Source: Volume 48, U. S. Code Section 1501-1508 (1970) Territories
Volume 43, U. S. Code Section 682 (1970) Public Lands)

B. The Bureau of Land Management, Department of the Interior, is responsible for administering the law and for the transfer or lease of all public lands.

C. There may be some examples where public land is leased to American corporations which themselves are heavily foreign owned but, there are no known exceptions to the general rule.

The fact that this rule constitutes very little constraint to foreign business ventures lies largely in the fact that most of the land in which the corporations ~~are interested~~ is private land. Once the public land has been transferred to the private sector, the Bureau of Land Management is no longer concerned. All private land falls under the jurisdiction of the 50 separate states.

II. Mining on Federal Lands

A. The Promotion of Mining Act of 1920, derived from an earlier act of 1872, states that valuable mineral deposits in lands belonging to the United States are open to exploration and leasing only to citizens of the United States and those who have declared their intentions to become citizens. However, in that land can be leased by any corporation organized under the laws of the United States, aliens may acquire leases or permits by owning a controlling interest in such a corporation, provided that their country grants reciprocal privileges to U. S. citizens. If, on the other hand, an alien's country does not grant similar privileges, then his ownership of any "appreciable amount of a corporation's stock will prevent that corporation from receiving a mineral lease or permit."

(Source: Volume 30, U. S. Code Sections 22, 24, 71, 181, 352, (1970) Mineral Lands and Mining)
Volume 43, U. S. Code Sections 3102-3300, (Public Lands)

B. The Division of Energy and Resources, Department of the Interior , is the responsible agency.

C. Technically, the exploitation of mineral rights on federal lands is further broken down. The 1920 act covers such on-shore resources as gas, oil, coal, oil shale, phosphates and sulphur. Other than the mentioned citizenship requirements, leasing of such land is subject only to the payment of royalties. Similar provisions extend to the use of public grazing land which is administered by the Bureau of Land Management.

Under the Outer Continental Shelf Act of 1953 which, up to now, concerns leases only on oil, gas and sulphur, there is no stipulation about who can hold leases, but practice has limited rights to U. S. citizens and domestically incorporated corporations. Again, up to 100% foreign ownership is permitted but there is no provision making reciprocation mandatory. The same provisions apply to the new Geothermal Steam Act.

Ownership (as differentiated from leasing) of public domain land may still be acquired by anyone (citizen or alien) who files for a patent and proves the discovery of valuable mineral deposits on that land. One proposal of the Mineral Leasing Act of 1973 (pending in Congress) would eliminate acquisition of ownership for everyone and make all such lands only leasable.

III. Hydroelectric Power

A. According to legislation passed in 1920 - hydroelectric power sites on navigable streams in the United States may be developed only by United States citizens, associations of U. S. citizens, or domestically organized corporations.

The term "navigable streams" is extended to include tributaries affecting navigable stream or streams on or affecting public lands.

(Source: Volume 16, U. S. Code, Section 797e (1970) Power)

B. The Federal Power Commission is responsible for issuing licenses to eligible parties.

C. There is no limitation upon the degree of foreign control or ownership of domestic corporations, but the FPC knows of no example of significant foreign ownership in a hydroelectric power operation.

IV. Atomic Energy

A. In order to prevent potentially harmful effects to the defense, security or health and safety of the public, no licenses for the operation of atomic energy utilization or production facilities may be issued to aliens or to foreign owned or foreign controlled corporations.

(Source: Volume 42, U. S. Code Section 2133 (1970) Public Health & Welfare)

B. The Atomic Energy Commission has complete responsibility for this act.

C. "Utilization facility" normally means a reactor while "production facility" normally means reprocessing plants.

The AEC's jurisdiction extends to such areas as fabrication of fuel elements, uranium milling and mining, and activities involving radioactive isotopes. However, there are no specific restrictions against alien ownership or control of such facilities. Thus, investment and activity in these sectors is permitted unless it is found "inimical to the nation's welfare."

In defining foreign ownership or control of utilization and production facilities, there are no general rules such as allowable percentages of ownership. Licensing is based on the merits of individual cases.

Vol. 3 of AEC Reports mentions a case (SEFOR reactor or GE and Southwest Atomic Energy Associates) in which a German corporation put up about 50% of the funds for the construction of a demonstration reactor facility in Arkansas. No stock interest was involved. The AEC decision was that the applicant was not owned or controlled by a foreign-owned corporation.

Recently (1972 or 73) the AEC approved the transfer or a license for a utilization facility from Gulf Corporation to a 50%-50% Gulf-Royal Dutch Shell partnership because there was found to be no foreign control or domination which would be inimical to the welfare of the United States.

Banking

A. Only banks incorporated within the United States may become members of the Federal Reserve System and/or the Federal Deposit Insurance Corporation. (However, consideration is being given to allowing foreign branches to become members of FDIC.) There is, however, no limitation to the percentage of a bank which may be foreign owned.

(Source: Volume 12, U. S. Code Section 321 (1970) Banking)

B. The Federal Reserve System is the regulatory agency of the banking system.

The Federal Deposit Insurance Corporation insures depositors against bank defaults.

C. Any foreign person or corporation establishing a subsidiary or acquiring control (25% or more) of a domestic bank must be approved by the Federal Reserve's Board of Governors.

Some examples of recently established subsidiaries approved by the Board are:

1) Sanwa Bank of California, subsidiary of Sanwa Bank, Ltd. (Osaka).

2) Mitsubishi Bank of California, subsidiary of Mitsubishi Bank of Tokyo.

3) First Pacific Bank of Chicago, subsidiary of Dai-ichi Kangyo (Tokyo).

4) Banco de Roma of Chicago, subsidiary of Banco de Roma.

One example of a recent acquisition is First Western Bank of Los Angeles acquired by Lloyds Bank, Ltd. (London).

Government Contracting

Besides the procedures and requirements of normal government contracting, for the most part, the Federal Government does not distinguish between contractors operating within the United States on the basis of domestic or foreign ownership. Perhaps the most difficult problem for a contractor controlled by foreign interests is that of securing security clearances, which is required for many contracts involving access to or development of classified information. Both "facility clearances" and "individual clearances" for key management personnel may be necessary. For corporations, clearances must be obtained for all principal officers and chairman of the board plus others who may have access to classified information. In that most foreign nationals are ineligible for clearance, this provision may pose a substantial problem unless all personnel requiring clearance are U.S. citizens.

Notwithstanding the contrary appearances, these rules need not be insuperable barriers to foreign interests wishing to invest in concerns contracting with the United States Government. First, it must be remembered that many contracts do not involve classified information. Moreover, where classified data does bring the security clearance requirements into play, arrangements can be made by which the foreign interests retain the right to profits but relinquish control and direction of the enterprise.

One arrangement employed for this purpose is the "voting trust." In this trust, a single trustee or a board of trustees is established to direct the business; the trustees are American citizens eligible for security clearances. Foreign interests are entitled to all the profits but have no say in mangement and have no access to classified data.

The Buy American Act of 1933 adopts the general policy that only items mined, manufactured or produced in the United States can be acquired by the government for public use. Nevertheless, if the foreign-owned enterprise domestically produces the product it sells to the Federal Government or if such items contain at least 50% United States products by value, the Buy American Act is inapplicable.

(Sources: Volume 41, U. S. Code Subsection 10(a-d), (1970), and Industrial Security Manual for Safeguarding Classified Information (DOD Manual, 5220.22, April, 1970))

Other general restrictions against foreign investment, such as contained within the Interest Equalization Tax, disclosure laws, antitrust laws, and controls under the Trading with the Enemy Act do not discriminate against specific sectors of the economy.

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In

U.S. DEPARTMENT OF COMMERCE
Domestic and International Business Administration
Washington, D.C. 20230

Date: May 14, 1974

To: John M. Niehuss
Assistant Director for
Investment and Services - CIEP

From: Daniel Arrill J.N.
Director
Investment Policy Division - OIFI

Subject: Draft Study Re Investment in the U.S. By Foreign Governments or Government-Controlled Corporations

As requested, we are submitting the following information as part of the above-mentioned study:

1. A list of existing government and government-controlled activities in the U.S. - Item 7.

The attached list has been put together from sources inside and outside the Department of Commerce and lists, by country (in alphabetical order), the names of subsidiaries in the U.S. of corporations, airlines, travel, tourist and trade promotion offices that are wholly or partially-owned by foreign governments. Given the short time frame, we had to confine ourselves to readily accessible information and to countries which we thought might be of interest in the context of the proposed study.

We found that most international airlines with offices in this country are either wholly or partially owned by the respective governments. In cases where foreign governments do not maintain separate travel or tourist promotion offices, those functions are typically handled by the airline representatives.

2. Application of Reporting Requirements to Foreign Governments - Item 8

The Bureau of Economic Analysis, which is responsible for the collection of foreign direct investment statistics in the Department of Commerce, tells us that existing reporting requirements, such as 15 CFR, Section 803, apply equally to domestic and foreign owners of business assets. BEA adds, however, that these regulations are hardly ever observed by companies in which a foreign government has a controlling interest. The U.S. Government has at present, no way of enforcing these requirements. BEA assures us that the new benchmark study for reverse foreign investments, which is now being prepared, will almost certainly provide more of the requested information.

Existing Foreign Government and Government-Controlled Activities in the U.S.

Argentina
    Aerolineas Argentinas

Australia
    Qantas Airlines

Austria
    American Elin Corporation
    Bohler Brothers of America, Inc,
    Schoeller-Bleckmann Steel Corp.
    VOeST International Inc.
    Austrian Airlines
    Austrian Cultural Institute
    Austrian Federal Railways
    Austrian National Tourist Office
    Austrian Trade Delegation

Belgium
    Sabena

Brazil
    Varig Airlines

Canada
    Air Canada
    Polysar Inc., Ohio)
    Polysar Latex, Inc., Tennessee) wholly or partially-owned by the
    Texas Gulf Inc.) Canadian Development Corp.
    Canadian Tourist Office, New York

Chile
    LAN Airlines

Colombia
    Avianca Airlines
    Aerocondor Airlines

Denmark
    Tourist Association of Denmark
    Danish-American Trade Council

Ecuador
    Ecuatoriana Airlines

<u>Finland</u>
Finnair, New York
Finlines, New York
Pineville Kraft Corp., Louisiana

<u>France</u>
Air France
French Government Tourist Office, New York
French-American Chamber of Commerce
French Line

<u>Germany</u>
American Drill Bushing Co.
American Pecco Steel Corp.
F.U.S. Avionics Inc.
Precision National Corp.
Richard Brothers Punch Co.
Hugo Stinnes Corp.
Volkswagen of America, Inc.
Welch Tool Sales Inc.
Lufthansa German Airlines
German Federal Railways Office (Bundesbahn)
German-American Chamber of Commerce (depends on the Government for a substantial portion of their funding)

<u>Iceland</u>
Icelandic Airlines (Loftleidir)

<u>Iran</u>
Iran National Tourist Organization
Iran Handicraft Center
National Iranian Oil Co.
Iran Air
Arya Shipping Lines
Iran Lines (?)

<u>Ireland</u>
Irish International Airlines
Irish Tourist Board
Irish Export Board
Irish Industrial Development Association
Shannon Free Airport, New York

<u>Italy</u>
Alitalia Airlines, New York
Italian Trade Commissioner (New York, San Francisco, Los Angeles, New Orleans, Chicago, Houston)
Italian Comitato Nazionale Energia Nucleare, Washington
Italian Federation of Farmers' Cooperatives, Washington, D.C.
Italian Government Travel Office, New York
Novamont Inc., West Virginia (subsidiary of Montecatini Edison)

Japan
Japan Airlines
Japan External Trade Organization (JETRO)

Kuwait
Kiawah Island, Charleston, South Carolina
Hilton Hotel Complex, Atlanta
Cattle Feed Lots in Idaho (company name unknown)
Other Real Estate, Florida, Texas, California

Mexico
Aeronaves de Mexico
Aeromexico

Netherlands
KLM Royal Dutch Airlines
Shell Oil Co., New York
Shell Chemical Co.
International Lubricant Corp.
Shell Pipeline Corp.
) Louisiana
Chemetron-Noury Corp., New York
Columbia Nitrogen Corp., Georgia
Nipro Inc., Georgia

New Zealand
Air New Zealand

Portugal
TAP Intercontinental Airlines of Portugal
Casa Portugal (Tourist and Trade Promotion Office)

South Africa
South African Airlines

Spain
Iberia Airlines
Spanish Tourist Office

Sweden
SAS Scandinavian Airlines (Sweden, Denmark, Norway)

Switzerland
Swissair
Swiss National Tourist Office

United Kingdom

British Petroleum
British Overseas Airways Corp.
British Travel Association, New York
British Trade Development Office
British West Indies Airlines

U.S.S.R.

Aeroflot, New York
Amtorg Trading Corporation, New York
Kama Purchasing Commission, New York
Intourist, New York

Venezuela

Viasa Airlines

Yugoslavia

State Tourist Office, New York