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DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM May 14, 1974

To : John M. Niehuss
Assistant Director for Investment
and Services
Council on International Economic Policy

From : Stephen Bond SB
Office of the Legal Adviser
Department of State

Subject: Problems of Sovereign Immunity Arising from Investment in the United States by Foreign Governments or Foreign Government-controlled Institutions

I. The Present Situation

Under the classic, or absolute, doctrine of sovereign immunity, foreign governmental agencies could not be sued in U.S. courts. In 1952, the then acting Legal Adviser of the State Department issued the "Tate letter" which set forth a "restricted" theory of sovereign immunity, to the effect that foreign governments engaging in sovereign or public acts were immune from suit in U.S. courts, but that such governments engaging in private (commercial) acts were not so immune. Under this doctrine, which still guides our policy, at least three problem areas exist:

1. Service of process: There is no specific statutory procedure for service of process which permits plaintiffs to obtain personal jurisdiction over foreign states. This has caused uncertainty about the proper method of service and has led plaintiffs to attach foreign government assets (such as vessels or bank accounts) in the U.S. in order to obtain quasi-in-rem jurisdiction sufficient to get into court. U.S. plaintiffs must, therefore, rely on the presence of assets in the U.S. and a writ of attachment, which denies use of the assets to the foreign government until the case is adjudicated and causes considerable foreign relations problems on occasion.

2. Execution - The Tate letter did not affect the State Department position that, after judgment has been entered against a foreign government agency, its property is nevertheless immune from execution in aid of judgment, even where assets of a commercial character have already been attached to establish jurisdiction and even though there has been no immunity from suit. (However, foreign states usually pay their judgments.) This state of affairs led to complaints that the Tate letter was only an empty gesture. On occasion, the State Department will make representations to a foreign state that certain judgments should be paid, but there is no standard practice. American plaintiffs have, therefore, brought suit and on occasion won judgment only to find that they have gained a hollow victory.

3. Suggestions of Immunity - Under the present system, foreign governments claiming sovereign immunity from jurisdiction, attachment, or execution may request the State Department to issue a "suggestion of immunity" to the court, which is generally considered as binding as the courts make no independent findings of fact or law. Plaintiffs point out that the State Department is not well suited to make such quasi-judicial determinations as to whether property is public or private in nature, or is owned in fact by a foreign government. In addition, while part of the original rationale for having the State Department make suggestions of immunity was to avoid having a court embarrass our foreign relations, the fact that it is the Department of State making the determination sometimes leads foreign states to regard the decisions as political, rather than legal, in character.

Despite these problems, the American dealing with foreign governments or their agencies is not totally without aid. Many of our FCN treaties provide that no enterprise of either party, whether corporation, association, or government agency or instrumentality shall, if it engages in commercial, industrial, shipping, or other business activities within the territory of the other party, claim or enjoy, either for itself or its property, immunity from taxation, suit, execution of judgment or other liability to which private enterprises are subject. (However, under these provisions, if no entity separable from the foreign government is present, there is no waiver of sovereign immunity.)

In addition, an American can always seek to have a waiver of sovereign immunity in regard to a particular transaction included in a contract with a foreign government agency. But, under present practice, such a waiver can be revoked after the cause of action has been filed.

Though the State Department has not conducted a study of the unique nature of the law of sovereign immunity on the willingness of private U.S. business entities or individuals to enter into transactions directly or collaterally with foreign governments or agencies, private lawyers have suggested to the Department from time to time that the above three noted problems have hindered the growth of such commercial intercourse.

II. Prospective Legislation

H.R. 3493 is a bill drafted by the State Department and Department of Justice which would deal with the problems set forth above in four ways.

A method of service to obtain in personam jurisdiction is specified, thereby eliminating the needs to attach assets in order to gain quasi in rem jurisdiction.

Second, immunity from execution is limited and if jurisdiction and judgment are attained, there would be an opportunity to obtain satisfaction of judgment relating to a claim based on commercial activity or other specifically defined property.

Third, the task of determining whether a foreign state is entitled to immunity is transferred from the State Department to the courts.

Lastly, the restrictive theory of sovereign immunity, as set forth in the Tate letter, would be incorporated into statutory law. Thus, immunity would still be present for "public" acts, but not for transaction or acts that are commercial in nature, or in cases where immunity has been waived.

The statute would not alter our obligations under FCN treaties or bilateral air transport agreements. These obligations, whether establishing a higher or lower standard of immunity, will continue to govern where applicable.

Hearings on H.R. 3493 were held on June 7, 1973. In response to points raised at that time and subsequent comments by various USG agencies and private individuals, a variety of amendments to "fine tune" the language of the bill and clarify certain points have been prepared and circulated among the Bar.

On the basis of these drafts, several bar committees have given general endorsement to the bill, although some reservations remain concerning the elimination of maritime remedies in rem and attachment for jurisdiction quasi in rem.

We expect to obtain final clearances within the Executive Branch within the next few weeks and to move ahead on the Hill when the Judiciary Committee clears its docket. It is not expected that the House will consider the bill before the end of this year.

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APRIL 21, 1962

U.S. DEPARTMENT OF COMMERCE

OFFICE OF BUSINESS ECONOMICS

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter VIII—Office of Business Economics, Department of Commerce

PART 803—REPORTS ON FOREIGN INVESTMENT AND ON INTERNATIONAL RECEIPTS AND PAYMENTS OF ROYALTIES AND FEES

Introduction. Quarterly and annual reports giving data on United States direct business investments in foreign countries, foreign direct business investments in the United States, and international receipts and payments of royalties, licensing fees, rentals, and other service payments, are being collected by the Department of Commerce to provide information needed in the preparation and compilation of aggregate statistics used in the balance of international payments statements of the United States.

Since the volume and importance of these transactions has continuously risen in the post-war period, the need for accurate statistics in these fields makes it necessary to collect this information on a mandatory basis. Information obtained from these reports will provide data on the flow of United States and foreign private direct-investment capital, on the income payments to parents and net earnings of these direct investment organizations, and the receipts from, and payments to, foreign countries of royalties, fees, rentals, etc.

The report forms used to collect data on United States foreign business investments are Forms BE-577, BE-577S, BE-577A, BE-35, BE-573, BE-573B and BE-573I. The forms used for data on foreign direct business investments in the United States are Forms BE-605, BE-605, BE-606B and BE-606I. Form BE-93 is used for data on international receipts and payments of royalties, license fees, rentals, etc., (other than those between direct investment organizations and parent companies). These forms are described in detail in § 803.2 of these instructions.

Pursuant to Executive Order 10033 of February 8, 1949 (14 F.R. 561), issued under section 8 of the Bretton Woods Agreements Act (59 Stat. 515, 22 U.S.C. 286f), the National Advisory Council on International Monetary and Financial Problems, after consultation with the Director of the Bureau of the Budget, has determined that the collection of current data on international investment, licensing and related service transactions of U.S. business firms is essential in order that the United States Government may continue to comply with official requests from the International Monetary Fund for balance-of-payments information.

In accordance with sections 2(b) and 2(c) of Executive Order 10033, the Director of the Bureau of the Budget has designated the Commerce Department as the Federal executive agency to collect the required data and the Secretary of Commerce has assigned this responsibility to the Office of Business Economics, Department of Commerce.

Reports on Forms BE-577, BE-577S, BE-577A, BE-35, BE-573, BE-573B, BE-573I, BE-605, BE-605, BE-606B, BE-606I and BE-93 are therefore mandatory under section 8(b) of the Bretton Woods Agreements Act cited above.

This collection of data has been approved by the Bureau of the Budget under the Federal Reports Act (56 Stat. 1078, 5 U.S.C. 139–139f). All replies will be held in confidence and used only in the preparation of aggregates for balance of payments and related tabulations, under the provisions of section 4(b) of that act and section 8(c) of the Bretton Woods Agreements Act.

Inasmuch as the reports involve a foreign affairs function of the United States, section 4 of the Administrative Procedure Act does not apply. In any event it is found that because of the nature of the reports, the fact that they are required under the Bretton Woods Agreements Act upon appropriate request, and that, consequently, the Instructions and Forms are merely declaratory of that Act and Executive Order above mentioned, no useful purpose would be served by notice and public procedure thereon, the same being impracticable and unnecessary. Inasmuch as the required reports will not be due for 30 days from publication of these instructions, there is no need for postponement of their effective date, and such instructions are, therefore, effective upon publication in the FEDERAL REGISTER.

A new Part 803 is added to Chapter VII, Title 15, to read as follows:

GENERAL INSTRUCTIONS

Sec.

AUTHORITY: §§ 803.1 to 803.12 issued under R.S. 161; 5 U.S.C. 22. Interpret or apply sec. 8, 59 Stat. 515; 22 U.S.C. 286f, E.O. 10033, 14 F.R. 561, 3 CFR 1949 Supp.

GENERAL INSTRUCTIONS

§ 803.1 Who must report.

(a) *United States business investments abroad.*—(1) *Basic requirement.* A report is required from every corporation, partnership, individual, or any other person or closely related group of persons subject to the jurisdiction of the United States and ordinarily residing within the United States having:

(i) Ownership of 25 percent or more of the voting stock of foreign corporations, either directly or together with domestic or foreign affiliates (Forms BE-577 and BE-577S). See § 803.2(a)(1) for further detail.

(ii) Ownership of at least 10 percent, but less than 25 percent, of the voting stock of foreign corporations, or the equivalent interest in an unincorporated foreign enterprise, held either directly or together with domestic affiliates (Form BE-577A). See § 803.2(a)(1) for further detail.

(iii) Unincorporated foreign branches, or other direct foreign operations conducted by a United States incorporated enterprise or other business organization in its own name in a foreign country. This includes mining claims, oil concessions, exploration and development activities or other property held by United States persons directly or jointly with others (Form BE-573). See § 803.2(a)(1) for further detail.

(2) *Estates and trusts.* Direct foreign investments held by a domestic estate or trust, i.e., an estate or trust created under the laws of the United States or any subdivision thereof, shall be reported by the fiduciary and not by a beneficiary. Such property must be reported whether or not any beneficiary is subject to the laws of the United States or any subdivision thereof.

(3) *Persons beneficially interested in property.* If direct foreign investments beneficially owned by a person subject to the jurisdiction of the United States were held by or in the name of another, only the person having the beneficial interest shall report, except as specifically provided in this section regarding domestic estates and trusts.

(4) *More than one person owning an interest in the same foreign organization.* Each owner is required to report if the aggregate ownership of the affiliated persons in the foreign organization

totals 25 percent or more of the voting securities. However, combined reports may be filed to cover the transactions of more than one owner. Where combined reports are filed, all owners other than the reporter(s) filing the full report remain liable for the report.

(5) *Insurance companies.* Reports for foreign branches or subsidiaries are required on Form BE-578I.

(6) *Motion picture companies.* United States producers or distributors of motion pictures operating in foreign countries through subsidiaries, affiliates or branches, may file quarterly reports on Form BE-35 in lieu of Forms BE-577 and BE-578; however, Forms BE-577S and BE-577A must be filed annually, if applicable.

(b) *Foreign business investment in the United States*—(1) *Basic requirement.* A report is required to be filed with respect to every business enterprise subject to the jurisdiction of the United States in which foreign persons, either as individuals or as affiliates hold a controlling interest, or which is controlled in the manner indicated in subparagraph (2) of this paragraph directly or indirectly by a foreign person or persons. Such business enterprises shall include, but not be limited to, corporations, partnerships, investments in real property, leaseholds, estates, trusts, and sole proprietorships or other forms of outright individual ownership.

(2) *Foreign beneficial interest.* If the foreign controlling interest in a United States business enterprise, including commercial real property, is held, exercised or administered by a United States estate, trust (including irrevocable trusts), nominee, agent, representative, custodian, or other intermediary of the foreign beneficial owners, such intermediary shall be responsible for reporting for the business enterprise the required information on Form BE-605, BE-606, BE-606B or BE-606I, or shall instruct the United States business enterprise in question to submit the required information. This does not relieve the United States business enterprise of responsibility for reporting if such business enterprise has knowledge of the direct or indirect foreign controlling interest, but only one report should be filed for each such enterprise. For the purposes of this report, accounts or transactions of a United States business enterprise with a United States estate, trust, nominee or other intermediary of foreign beneficial owners shall be considered as accounts or transactions with such beneficial owners.

(3) *Insurance companies.* Reports for U.S. branches or subsidiaries of foreign insurance companies are required on Form BE-606I.

(4) *Consolidated reports.* If a reporter held a controlling interest in other United States enterprises engaged in the same type of business and is required to report, the information requested in the reporting forms may be consolidated for such reporter and enterprises, provided all accounts are fully consolidated. A list of the enterprises included in the consolidations must be provided.

(c) *International receipts and payments of royalties, license fees, rentals, etc.* United States individuals and firms who have entered into agreements with residents or governments of foreign countries to sell or buy outright or provide or be provided with the use of intangible assets or rights such as patents, techniques, processes, formulae, designs, trademarks, copyrights, franchises, manufacturing rights, and other similar intangible property or rights shall report on Form BE-93.

(NOTE: Film royalties, oil royalties, and other natural resources (mining) royalties are not reportable on this form.) Companies leasing or renting machinery, equipment, etc., should also respond on this form.

§ 803.2 Forms to be used and frequency of reports.

(a) *Each reporter is required to submit reports on the following forms, as applicable.* (1) United States direct investments abroad:

Form BE-577: One Form BE-577 is to be filed quarterly for each foreign corporation directly owned by the reporter and/or its domestic and foreign affiliates to the extent of at least 25 percent of total outstanding voting stock. Where more than one domestic affiliate has transactions with, or interests in, the same foreign corporation, consolidated reports should be filed; consolidated reports may also be filed where several foreign subsidiaries operate in the same country and industry. Reports are also required for direct transactions with foreign enterprises in which 25 percent or more of the voting stock is held through primary foreign enterprises.

Form BE-578: One Form BE-578 is to be filed quarterly for each foreign branch and other direct foreign operations of American reporters, including mining claims, oil concessions held directly or jointly with others and other property such as real estate but excluding branches of banks or insurance companies which are reportable on Forms BE-578B and BE-578I respectively. Separate reports should be filed for each foreign branch. Where a reporter, or several affiliated American corporations, has (or have) branches operating in the same country, or a joint interest in one or more branches, consolidated reports may be filed.

Form BE-35: United States motion picture producers or distributors may elect to file one Form BE-35 quarterly for each foreign subsidiary, affiliate or branch, in lieu of Forms BE-577 or 578, as applicable. The instructions as to ownership and consolidations listed for Forms BE-577 and 578 also apply to filing on Form BE-35.

Form BE-578B: One Form BE-578B is to be filed quarterly for each foreign branch of a United States banking institution. Separate reports should be filed for each foreign branch; consolidated reports may however be filed where a United States bank has several branches operating in the same country.

Form BE-578I: One Form BE-578I is to be filed annually for each foreign branch or subsidiary of a United States insurance firm. Separate reports should be filed for each foreign branch; consolidated reports may however be filed where a United States insurance company has several branches operating in the same country.

Form BE-577A: One Form BE-577A is to be filed annually covering the foreign organizations in which the reporter and its domestic affiliates own in excess of 10 percent, but less than 25 percent, of voting stock, or equivalent ownership in unincorporated foreign enterprises.

Form BE-577S: Reports covering transactions between primary and secondary foreign corporations (see instruction 803.6(a) for definitions) are to be filed on an annual basis. Separate reports should be filed for each secondary foreign corporation owned through a primary foreign corporation and its foreign affiliates for which the United States equity amounts to 25 percent or more of its voting securities. However, a reportable interest is deemed to exist only if the United States parent owns 50 percent or more of the voting stock of the primary foreign corporation and it in turn owns at least 50 percent of the voting stock of the secondary foreign organization. Transactions of domestic affiliated companies directly with such secondary foreign corporations should be treated as primary relationships, and are reportable on Form BE-577 on a quarterly basis. Combined reports may be filed where several secondary foreign corporations operating in the same country are owned by the same primary foreign corporation. (See also § 803.6(a)(2).)

(2) Foreign direct investments in the United States.

Form BE-605: One Form BE-605 is to be filed quarterly for each United States corporation 25 percent or more of whose voting stock is owned directly or indirectly by a foreign person(s) or organization(s) and its United States or foreign affiliates.

Form BE-606: One Form BE-606 is to be filed quarterly for each United States branch of a foreign business organization, or for leaseholds, real property or other United States unincorporated business property owned directly by a foreign person or organization but excluding branch operations in the United States of foreign banks or insurance companies.

Form BE-606B: One Form BE-606B is to be filed quarterly for each United States branch of a foreign banking institution. Where a foreign bank has more than one United States branch, consolidated reports may be filed.

Form BE-606I: One Form BE-606I is to be filed annually for each United States branch of a foreign insurance firm, or for United States insurance companies 25 percent or more of whose voting stock is held by foreign owners.

(3) International payments of royalties, fees, etc.

Form BE-93: One Form BE-93 is to be filed annually by each United States person or firm receiving from foreigners, or paying to foreigners, royalties, licensing fees, rentals, etc., arising from the use, purchase or sale of intangible assets or rights.

(b) *Frequency of reports.* Reports on Forms BE-577S, BE-577A, BE-578I, BE-606I and BE-93 must be filed annually beginning with a report covering the calendar or fiscal year 1961; reports on Forms BE-577, BE-578, BE-35, BE-578B, BE-605, BE-606 and BE-606B must be filed quarterly beginning with a report for the first calendar or fiscal quarter of 1962.

§ 803.3 Reporting by banks and insurance companies.

(a) *United States banks, including agencies of foreign banks, reporting on Forms BE-577, 577A, 577S, 578B, 605 or 606B.* In order to avoid duplication of claims or liabilities reported on Treasury Foreign Exchange Forms B-1 and B-2, intercompany or branch accounts reported on the Commerce forms listed above should exclude accounts with or investments in foreign branches or subsidiaries or accounts with a foreign

parent organization and its affiliates, to the extent they are included in the Treasury foreign exchange forms. However, data covering earnings, income, fees or other charges remitted or credited, or permanent investments not includable in the Treasury forms, should be reflected in the Commerce forms.

(b) *United States insurance companies.* United States insurance companies should file annual reports on Form BE–578I covering their transactions with their foreign subsidiaries or branches, or on Form BE–606I, covering their transactions with their foreign parent companies or head offices.

§ 803.4 Exemptions.

(a) *United States direct investments abroad—(1) Exemption based on value of property.* A reporter whose property in foreign countries otherwise subject to reporting has an aggregate value of less than $2,000,000, at the beginning of the current calendar year based on the value of holdings of securities, equity in surplus accounts, and intercompany indebtedness or net branch investment in foreign countries, is not required to report. Value is to be determined by the book value as carried on the books of the foreign organization converted into United States dollars. Reports for individual foreign subsidiaries, affiliates, or branches (other than banks) which are inactive, or have a book value of less than $25,000 at the beginning of the calendar year, can be omitted with a note to that effect. For foreign branches of banks, reports are required if either (i) the book value exceeds $25,000 or (ii) the total assets exceed $2,000,000.

(2) *Certain persons exempted regardless of the amount or kind of property.* Report need not be made by any person who is within any of the following categories.

(i) Members of the Armed Forces of the United States serving outside continental United States;

(ii) Citizens of the United States who permanently reside in a foreign country;

(iii) Officers or employees of foreign governments and members of the immediate families of such persons, provided they are not citizens of the United States;

(iv) Religious bodies, charitable organizations and other nonprofit organizations, except for the interests of such groups in foreign organizations conducting business for profit.

(b) *Foreign direct investments in the United States—(1) Exemption based on value.* If the value of a business organization (other than a U.S. branch or agency of a foreign bank) otherwise required to report is less than $2,000,000 at the beginning of the current calendar year, such a person or business organization is not required to report. The value is to be determined by the book value of the foreign owner's holdings in the securities, surplus accounts, and liability accounts of the reporter. For banks, reports are required if total assets exceed $3,000,000.

(2) Certain property exempted. Reports are not required for foreign-owned assets in the United States not employed in connection with a United States business enterprise controlled abroad. Assets of religious bodies, charitable organizations or other non-profit organizations are exempt from reporting, except for the interest of such groups in United States enterprises primarily conducting business for profit. Real or personal property acquired for personal use or occupancy by a foreign owner is exempt from reporting. However, interests in real property in the United States acquired for business purposes by a foreign owner must be reported, except as otherwise exempted by this section.

(c) *International receipts and payments of royalties, license fees, etc.* Reports on Form BE–93 are not required if the respondent's annual foreign receipts and payments, combined, of the types covered by the form, are less than $25,000 in the year covered by the report.

§ 803.5 General definitions.

For the purpose of these reports, the following definitions are prescribed:

(a) *Person.* "Person" shall include an individual, partnership, association, corporation, estate or trust or other organization.

(b) *Person subject to the jurisdiction of the United States.* (1) Any person ordinarily residing in the United States.

(2) Any corporation or other organization created or organized under the laws of the United States or any State, territory, district, or possession thereof.

(3) Any other resident of the United States including branches of foreign organizations, real property, leaseholds, sole proprietorships and partnerships.

(c) *United States.* United States shall mean the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(d) *Foreign.* Foreign shall mean subject to the jurisdiction of a country other than the United States, and when applied to persons shall also mean not ordinarily residing within the United States.

(e) *Affiliates.* (1) Any group of persons who ordinarily exercise their voting rights in a business organization as a unit.

(2) In relation to any corporation or other organization issuing stock or similar securities, any person who, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities thereof.

(3) As to any other organization, any person who owns or controls 10 percent or more of the comparable ownership rights therein.

Any corporation or other business organization of which a person was an affiliate also shall be deemed to be affiliates of each other.

(f) *Control or controlling interest.* Control or controlling interest shall mean, for the statistical purposes of these reports, the direct ownership and/or indirect ownership through intermediaries or affiliates of 25 percent or more of the voting securities of a corporation or of other ownership equities in other types of organizations. Indirect control should be deemed to exist only if the United States parent owns 50 percent or more of the voting stock of the primary foreign corporation and it in turn owns at least 50 percent of the voting stock of the secondary foreign corporation.

(g) *Parent.* Parent shall mean any person or affiliated group of persons directly owning 25 percent or more of the voting securities of a corporation or of other ownership equities in other types of organizations. In some cases there may be more than one parent.

§ 803.6 Specific definitions.

(a) *Terms relating to the reporting of United States direct investments abroad.* (1) Primary foreign organization shall include the following organizations located in or under the jurisdiction of a foreign country:

(i) Any foreign corporation of which:

(a) The reporting organization owns 25 percent or more of the voting securities, or

(b) The reporting organization owns less than 25 percent of the voting securities but affiliates, either domestic or foreign, of the reporting organization own additional voting securities which when added to the amount owned by the reporting organization total 25 percent or more, or

(c) The reporting organization owns none of the voting securities but does own bonds, notes, or other certificates of indebtedness or has direct dealings by exchange of merchandise or rendering services, and 25 percent or more of the voting securities are owned by affiliates (domestic or foreign) of the reporting organization.

(ii) Any partnership in which a person subject to the jurisdiction of the United States is one of the partners, whether general, special, limited, or otherwise.

(iii) Branch: The interest of any person subject to the jurisdiction of the United States in property in any foreign country allocated to or held in the name or for the use of any branch, depot, or office outside of the United States maintained by such person for the transaction of any of his business. Foreign operations conducted by United States corporations in their own names and not through foreign incorporated companies are to be reported as branch operations.

(iv) Any business enterprise or real property owned outright by a resident of the United States.

(2) "Secondary foreign organization" shall include the following organizations:

(i) A foreign organization allied with the reporter through the ownership of at least 50 percent of its voting securities or other certificates of ownership by a primary foreign organization, which in turn is owned by the reporting organization to the extent of at least 50 percent of its voting stock, giving the U.S. reporter an ownership of at least 25 percent of the secondary foreign organization.

(ii) Branches of primary foreign organizations located in countries other than the primary organization have to be reported separately. However, branches or subsidiaries of a primary foreign organization located in the same

country and engaged in the same type of business as the primary organization may be combined and one report submitted covering the activities of all of these organizations. The report must be a consolidated report showing the total activities of all organizations and not a report of the primary organization showing only the investment of the primary in the secondary organizations. Provide a list of all organizations included in such consolidations.

(3) "Associated" foreign organization: The ownership of at least 10 percent but less than 25 percent of the voting securities of a corporation, or an equivalent interest in an unincorporated foreign organization, held directly by the reporter and its United States affiliates, shall constitute association with that organization for the purposes of these reports. Note that separate reports are required for each "associated foreign organization." (When the ownership of the foreign organization is 25 percent or more, either entirely by the reporter or in conjunction with affiliates, the foreign organization must be reported on Form BE–577.)

(b) *Terms relating to the reporting of foreign direct investment in the United States.* (1) "Branch" shall mean an unincorporated business enterprise subject to the jurisdiction of the United States controlled by a foreign person or organization, including all assets or liabilities connected with the operations of such a branch.

(2) "Reporter": Reporter shall mean the business enterprise for which a report is required. If the enterprise is in the nature of a leasehold or real property not identifiable by name, the report may be filed on behalf of the reporter by an agent or representative of the foreign beneficial owner or by such owner.

§ 803.7 Estimates.

Every question on the reporting forms which a reporter is required to use in rendering his report must be answered. If the information is not available as specified in the form, a reasonable estimate should be entered, labeled as such. If there is no basis for such an estimate, state, "unknown" with an appropriate explanation. However, if and when the information becomes available, a supplementary report must be filed promptly with a full explanation.

§ 803.8 Space not needed.

Space not needed or inapplicable for supplying requested information should be left entirely blank. When there is nothing to report under any question state "no" or "none."

§ 803.9 Special filing procedures.

When data specified on the reporting forms are not available to the reporter, or when consolidation beyond that specifically provided for above would reduce reporting burden without loss of significant information, the reporter may apply to the Balance of Payments Division of the Office of Business Economics, United States Department of Commerce, for consideration of the specific problem.

§ 803.10 Number of reports.

Only the original report should be filed.

§ 803.11 Time and place of filing reports.

Reports on Forms BE–577, BE–578, BE–35, BE–578B, BE–605, BE–606 and BE–606B shall be filed on a quarterly basis within 30 days of the close of the calendar or fiscal period used by the reporter except for the final quarter of the calendar or fiscal year when reports may be filed within 45 days. Reports on Form BE–577S, BE–577A, BE–578I, BE–606I and BE–93 shall be filed on an annual basis within 90 days of the close of the calendar or fiscal year. Reports should be sent to the Department of Commerce, Office of Business Economics, BE–50, Washington 25, D.C. If additional time is needed to prepare the reports, a request for an extension of time should be addressed to the above office.

§ 803.12 Information regarding preparation of reports.

Anyone desiring information concerning these reports, or copies of forms, may apply directly to the United States Department of Commerce, Office of Business Economics, BE–50, Washington 25, D.C. Each reporting form contains the specific instructions needed for completion.

O.M.B. No. 41-R2390; Approval Expires October 31, 1973

FORM BE-606B
(5-29-73)

U.S. DEPARTMENT OF COMMERCE
SOCIAL AND ECONOMIC STATISTICS ADMINISTRATION
BUREAU OF ECONOMIC ANALYSIS

CONFIDENTIAL QUARTERLY REPORT

TRANSACTIONS OF U.S. BRANCHES OR AGENCIES OF FOREIGN BANKING FIRMS WITH HOME OFFICES

Identification	DO NOT USE
a. Quarter ended	
b. Name and address of U.S. reporter	
c. Country of foreign parent or home office	

Return completed form to: U.S. Department of Commerce
Bureau of Economic Analysis, BE-50 (II)
Washington, D.C. 20230

Industry

Form No.

PLEASE SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING FORM

Item No.	Item description	Amount (*Thousands of dollars*)
	Items paid or credited to home office account (debit –) *(See Specific Instructions)*	
1	Home office charges to U.S. branch for management services, foreign expenses allocated, fees, etc.	$
2	Foreign taxes charged to U.S. operations	
3	Interest	
4	Net income (or loss) of U.S. branch *(Period* _____)	
	Net investment by home office in U.S. branch or agency (accounts with home office) *(Exclude accounts reported on Treasury Foreign Exchange Forms B-1 and B-2. See General Instructions)*	
5	At beginning of quarter	
6	At end of quarter	
7	*DO NOT FILL IN* Net change	

Please note in this space any qualifications which you feel might be helpful.

USCOMM-DC

GENERAL INSTRUCTIONS

Purpose – Reports on this form are required in order to provide reliable and up-to-date information on the direct-investment operations of foreign persons or firms in the U.S., affecting the U.S. balance of international payments. Related information is collected on Form BE-605, Transactions with Foreign Parents; BE-606, Operations of U.S. Branches of Foreign Enterprises; and BE-606-I, Operations of U.S. Branches or Subsidiaries of Foreign Insurance Firms. The following is a condensation of the applicable set of instructions and regulations; a complete set will be sent on request.

Authority – Reports on Forms BE-605, BE-606, BE-606B, and BE-606-I are mandatory under Section 8(b) of the Bretton Woods Agreements Act (59 Stat. 515, 22 U.S.C. 286f). The report has been approved by the Office of Management and Budget under the Federal Reports Act (Public Law No. 831, 77th Congress). All replies will be held in confidence under the provisions of Section 4(b) of that Act and Section 8(c) of the Bretton Woods Agreements Act.

Relationship to Treasury Foreign Exchange Forms B-1 and B-2 – Intercompany or branch accounts reported on ...e Commerce Forms BE-605 and BE-606B should exclude accounts with a foreign parent company or home office, reportable on Treasury Foreign Exchange forms B-1 and B-2. Data covering earnings, income, fees or other charges remitted or credited, or investments not includable in the Treasury Forms, should be reported here.

Who must report – Reports on Form BE-606B are required from U.S. branches or agencies of foreign banking firms, except as exempted below.

Exemption – A branch or agency of a foreign bank is exempt from reporting if its total assets are less than $3,000,000.

Consolidation – A consolidated report may be filed for more than one branch or agency of the same foreign parent.

Filing of reports – Form BE-606B is a quarterly report. A single copy should be sent to the Bureau of Economic Analysis, BE-50(II), U.S. Department of Commerce, Washington, D.C. 20230, within 30 days after the close of each calendar or fiscal quarter, except for the final quarter of the calendar or fiscal year, when reports may be filed within 45 days.

Requests for extension of the filing dates, additional forms, or clarification of the reporting requirements or instructions should be directed to the same address.

DEFINITIONS

U.S. branch or agency – A U.S. business enterprise, not incorporated in the U.S., owned and operated by a foreign person or organization.

Foreign home office – A foreign bank conducting a business in the U.S. through a branch office or agency (see definition).

SPECIFIC INSTRUCTIONS

Enter all amounts in thousands of U.S. dollars. The rounding must be done by dropping the last three digits as in the following example: (Example: $1,033,242 should be reported as $1,033). Amounts of less than $500 should be entered as "–0–." If the information is not readily available, provide your best estimate and mark entry "Est."

Item 1 – Report all payments for services of a professional, administrative, or management nature paid or credited to the home office during the reporting period.

Item 4 – Report the "Net income (or loss) of United States branch" after provision for U.S. taxes and home office credits (royalties, service fees, foreign taxes, etc.) charged to the Income Account of the branch. (Such home office charges should be reflected in items 1 and 2.)

Items 5 and 6 – Net investment by home office in U.S. branch should comprise all assets of the branch located in the United States including those carried only on home office books, less liabilities. (See General Instructions above on relationship to Treasury Foreign Exchange Forms B-1 and B-2.)

OMB No. 41-R2389 Approval Expires October 31, 1973

FORM BE-606-I
(REV. 2-72)

U.S. DEPARTMENT OF COMMERCE
SOCIAL AND ECONOMIC STATISTICS ADMINISTRATION
BUREAU OF ECONOMIC ANALYSIS

CONFIDENTIAL ANNUAL REPORT

TRANSACTIONS OF U.S. BRANCHES OR SUBSIDIARIES OF FOREIGN INSURANCE COMPANIES WITH FOREIGN PARENT OR HOME OFFICE

Please read Instructions on reverse side before completing form.

TO: Bureau of Economic Analysis, BE-50(II)
U.S. Department of Commerce,
Washington, D.C. 20230

Identification	DO NOT USE
Year ended	
Name and address of reporter	
Name of foreign parent or home office	
Country of foreign parent	Industry
	Form No.

Item No.	Changes in investment *(See Specific Instructions)*	Amounts *(Thousands of dollars)*
1	Investment by foreign parent or home office at beginning of year	
2	Cash, equipment, etc., received from head office	
3	Securities transferred by head office	
4	Management fees and other foreign expenses charged to U.S. operations	
5	Interest charged by head office	
6	Net unrealized capital gains or losses (-)	
7	Net income (or loss) of U.S. branch or subsidiary (excluding unrealized capital gains or losses)	
8	Other additions *(Please specify major items)*	
9	TOTAL ADDITIONS *(Item 2 thru Item 8)*	
10	Branch profits remitted to home office	
11	Dividends remitted to head office *(subsidiaries only)*	
12	Other deductions *(Please specify major items)*	
13	TOTAL DEDUCTIONS *(Item 10 thru Item 12)*	
14	Investment by foreign parent or home office at end of year *(Item 1 plus Item 9 minus Item 13)*	
15	Change in home office account *(Do not fill in)*	
16	Memorandum Item — Increase in reserves for unearned premiums (non-life operations)	

Remarks

GENERAL INSTRUCTIONS

Purpose - Reports on this form are required in order to provide reliable and up-to-date information on the direct-investment operations of foreign persons or firms in the United States, affecting the United States balance of international payments. Related information covering operations of companies in industries other than insurance is collected on Forms BE-605 (transactions with foreign parents) and BE-606 (operations of United States branches or other unincorporated United States business of foreign enterprises).

The following is a condensation of the applicable set of instructions and regulations; a complete set will be sent on request.

Authority - Reports on Form BE-606-I are mandatory under Section 8(b) of the Bretton Woods Agreements Act (59 Stat. 515, 22 U.S.C. 286f). The report has been approved by the Office of Management of Budget under the Federal Reports Act (Public Law No. 831, 77th Congress). All replies will be held in confidence under the provisions of Section 4(b) of that Act and Section 8(c) of the Bretton Woods Agreements Act.

Who Must Report- Reports are required from all insurance companies or offices in the United States having a foreign parent or home office, except as exempted below.

Filing of Reports - Form BE-606-I is an annual report. A single copy of each report should be sent to the Bureau of Economic Analysis, BE-50(II), U.S. Department of Commerce, Washington, D.C. 20230, within 90 days after the close of each calendar or fiscal year.

Requests for extension of the filing dates, additional forms, or clarification of the reporting requirements or instructions should be directed to the same address.

Exemption - A U.S. organization engaged in the insurance business otherwise required to report, is exempted if: (a) In the case of U.S. corporations, the foreign parent's share of the capital stock, surplus, and liability accounts has a book value of less than $2,000,000, or (b) In the case of unincorporated U.S. branches, the excess of assets over liabilities and required reserves in the U.S., at book value, is less than $2,000,000. (Valuation at beginning of year being reported).

Consolidation - If a reporter held controlling interests in other U.S. insurance companies required to report, a consolidated report may be filed.

DEFINITIONS

U.S. Subsidiary - For purposes of this report, any U.S. incorporated enterpise in which a foreign owner, or affiliated group of owners, holds 25 percent or more of the voting stock, directly or indirectly.

U.S. Branch - A U.S. insurance business not incorporated in the U.S., owned by a foreign person or organization.

Foreign Parent - For the purposes of this report a foreign parent is any foreign holder, or closely related group of holders, owning, directly or indirectly, 25 percent or more of the reporter's voting securities, or analogous interests in an unincorporated business, or the foreign home office of a U.S. branch.

SPECIFIC INSTRUCTIONS

Enter all amounts in thousands of U.S. dollars. The rounding must be done by dropping the last three digits as in the following example: (Example: $1,033,242 should be reported as $1,033). Amounts of less than $500 should be omitted. It will be assumed that blank spaces, or entries identified with "0" or "-", represent amounts of less than $500, or of zero. If the information is not readily available, provide your best estimate and mark entry est. (estimated).

Items 1 and 14 - Investment by foreign parent in U.S. company should comprise the ownership in the capital stock, surplus and surplus reserves, and liabilities owed to the foreign parent, if any; investment by foreign home office in United States branches should comprise the assets employed by the branch less liabilities in the United States and required reserves.

Items 3 and 12 - Include in item 3 the value of U.S. or foreign securities owned by your head office and transferred to your account during the year. If securities held for your account were sold during the year and the proceeds transferred to your head office, this amount should be entered in item 12, with an explanatory note. Do not include in items 3 or 12 transactions in securities not involving the transfer of additional funds to or from your head office. In effect, changes in your holdings of securities or other assets of the U.S. subsidiary or branch should be segregated into those which arise from your own operations and those which represent additional investments or disinvestments of funds of your head office.

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O.M.B. No. 41-R0872; Approval Expires October 31, 1973

FORM BE-605
(1-29-73)

U.S. DEPARTMENT OF COMMERCE
SOCIAL AND ECONOMIC STATISTICS ADMINISTRATION
BUREAU OF ECONOMIC ANALYSIS

CONFIDENTIAL QUARTERLY REPORT

TRANSACTIONS WITH FOREIGN PARENTS

Please see Instructions on Reverse Side Before Completing Form

TO: Bureau of Economic Analysis, BE-50(II)
U.S. Department of Commerce,
Washington, D.C. 20230

Identification	DO NOT USE
Quarter ended	
Name and address of U.S. reporter	
Name of foreign parent	
Country of foreign parent	
If this is a first report state industry and product or service of reporter	Industry
	Form No.

ITEMS PAID OR CREDITED TO FOREIGN PARENT (DEBIT –)	Thousands of dollars (after withholding taxes)
1. Dividends (a) On common stock *(Tax withheld in thousands of dollars_____)*	
(b) On preferred stock	
2. Interest on bonds, notes, advances, etc.	
3. Royalties, license fees, and rentals	
4. Charges for management, services, head-office expenses allocated, etc.	

NET INCOME AND RETAINED EARNINGS	Thousands of dollars
5. Foreign parent's equity in net income (or loss) of U.S. company for: (a) Quarter ended as shown at top of report *(If not available, enter estimate)*	
(b) Year ended *(enter once a year and give ending date)* _____	
6. Foreign parent's equity in the retained earnings *(deficit)* account of the U.S. company *(enter once a year as of ending date for 5(b))*	

INTERCOMPANY ACCOUNTS, BONDS, NOTES, AND ADVANCES OUTSTANDING WITH FOREIGN PARENT AND ITS FOREIGN AFFILIATES	Thousands of dollars	
	Payable by U.S. Company	Due to U.S. Company
7. (a) Beginning of quarter		
(b) End of quarter		
(c) Net change *(Do Not Fill In)*		

CHANGES IN HOLDINGS OF YOUR CAPITAL STOCK AND OR CAPITAL CONTRIBUTION BY YOUR FOREIGN PARENT

8. a. ☐ Increase ☐ Decrease	b. Type of security	c. No. of units	d. Amount of transactions (thousands of dollars) and means of settlement

e. Other parties to transactions *(Check one)*

☐ U.S. ☐ Foreign *(Give name and address if foreign)*

i. Percent of issue owned before transactions _____ %

after transactions _____ %

GENERAL INSTRUCTIONS

Purpose - Reports on this form are required in order to provide reliable and up-to-date information on the direct investment operations of foreign persons or firms in the U.S., affecting the U.S. balance of international payments. Related information is collected on Form BE-606, Operations of U.S. branches or other unincorporated U.S. business of foreign enterprises, BE-606B, Operations of U.S. branches of foreign banking firms and BE-606-I Operations of U.S. branches or subsidiaries of foreign insurance firms. The following is a condensation of the applicable set of instructions and regulations; a complete set will be sent on request.

Authority - Reports on Form BE-605 and BE-606 are mandatory under Section 8(b) of the Bretton Woods Agreements Act (59 Stat. 515, 22 U.S.C. 286f). The report has been approved by the Office of Management and Budget under the Federal Reports Act (Public Law No. 831, 77th Congress). All replies will be held in confidence under the provisions of Section 4(b) of that Act and Section 8(c) of the Bretton Woods Agreements Act.

Who Must Report - Reports on Form BE-605 are required from U.S. corporations 25 percent or more of whose voting securities are held directly or indirectly by a foreign firm, person, or affiliated group of persons.

Exemption - A U.S. corporation otherwise required to report is exempted if the book value of the foreign owner's holdings in securities, surplus and liability accounts of the reporter is less than $2,000,000, or in the case of a bank, if total assets are less than $3,000,000.

Consolidation - If a reporter held controlling interests in other U.S. enterprises engaged in the same kind of business and required to report, a consolidated report may be filed.

Filing of Reports - Form BE-605 is a quarterly report. A single copy of each report should be sent to the Bureau of Economic Analysis, BE-50(II), U.S. Department of Commerce, Washington D.C. 20230, within 30 days after the close of each calendar or fiscal quarter, except for the final quarter of the calendar or fiscal year, when reports may be filed within 45 days.

Requests for extension of the filing dates, additional forms or clarifications of the reporting requirements or instructions should be directed to the same address.

Transactions or accounts with foreign affiliates of your parent company should be included herein if they refer to the same foreign country. If they refer to a different foreign country, separate reports or suitable memoranda should be filed. In particular, royalties and service fees paid by the reporter to foreign affiliates of the parent organization should be included in this report, together with any related accounts payable.

DEFINITIONS

U.S. Corporation - A business enterprise incorporated in the United States or its territories and possessions.

U.S. Subsidiary - For purposes of this report, any U.S. corporation in which a foreign owner, or affiliated group of owners, holds 25 percent or more of the voting stock, directly or indirectly.

Foreign Parent - For the purposes of this report a foreign parent is any foreign holder, or closely related group of holders, owning 25 percent or more of the reporter's voting securities, directly or indirectly.

SPECIFIC INSTRUCTIONS

Enter all amounts in thousands of U.S. dollars. The rounding must be done by dropping the last three digits as in the following example: (Example: $1,033,242 should be reported as $1,033). Amounts of less than $500 should be omitted. It will be assumed that blank spaces, or entries identified with "0" or "–", represent amounts of less than $500, or of zero. If the information is not readily available, provide your best estimate and mark entry est. (estimated).

Item 1-4. - Enter only amounts, after withholding taxes, paid or credited to the account of the foreign parent company by the United States company during the reporting period.

Item 3 - Report all royalties and fees including patent royalties, production royalties, copyright royalties, etc., as well as license fees and rentals paid or entered into intercompany accounts during the reporting period.

Item 4 - Report all payments or charges for professional, administrative, or management services.

Item 5(a) - This item should be reported each quarter for the period shown in the identification section of the report. If not available, enter best estimate. The amount entered for this item should represent the parent's equity in the quarterly consolidated net income (or loss) of your company and it's U.S. subsidiaries or affiliates, if any, before payment of common dividends, but after provisions for preferred dividends and taxes (except withholding taxes on dividends). Reporters engaged in extractive industries should report net income before book depletion charges, except charges representing the amortization of the actual cost of capital assets.

Item 5(b) - Same as item 5(a) except that amount should be entered once a year on the report for the quarter during which the relevant figures become available.

Item 6 - Report your foreign parent's equity in your company's consolidated retained earnings account as of the end of the year shown in Item 5(b).

Item 7 - Include in item 7 all intercompany accounts or indebtedness of your firm and its United States consolidated subsidiaries with the foreign parent whether expressed in dollars or foreign currencies. If the currency unit used in accounts reported in item 7 is other than U.S. dollars, please convert to U.S. dollars using the exchange rate normally used by you for such conversions. If an account contains entries which are denominated in more than one currency, convert all of them to dollars and aggregate these accounts to one dollar total for entry on the form. Note that the quarter's opening balance should reconcile with the previous quarter's closing balance; therefore, the same exchange rate should be used for converting the opening balance as was used to convert the closing balance on the previous quarter's report. A different rate might be used to convert the closing balance given on this report. If the closing balance as given on the previous report was in error, please note the correction. Entries made in item 7 should be consistent with entries made in items 1-4 insofar as they reflect these items. Banks should not include accounts reportable on Treasury Forms B-1 and B-2.

Item 8 - Enter here any changes in your parent's and/or its foreign affiliates' holdings of your capital stock including preferred stock and common stock. Stock dividends, capital contributions by the parent company, and capitalization of intercompany accounts should also be included but should be identified separately. If your company is wholly liquidated or sold to U.S. interests, show the amount obtained in liquidation or sales price. Report also the amount of profit or loss on the liquidation or sale of your company based on the book value of the parent's equity as shown on your books.

USCOMM-DC

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OMB No. 41-R873.12; Approval Expires October 31, 1973

FORM BE-606
(REV. 2-72)

U.S. DEPARTMENT OF COMMERCE
SOCIAL AND ECONOMIC STATISTICS ADMINISTRATION
BUREAU OF ECONOMIC ANALYSIS

CONFIDENTIAL QUARTERLY REPORT

TRANSACTIONS OF U.S. BRANCHES OR OTHER UNINCORPORATED U.S. BUSINESS WITH FOREIGN HOME OFFICE

Please see Instructions on Reverse Side Before Completing Form.

TO: Bureau of Economic Analysis, BE-50(II)
U.S. Department of Commerce,
Washington, D.C. 20230

Identification	DO NOT USE
Quarter ended	
Name and address of U.S. reporter	
Country of foreign home office	
If this is a first report state industry and product or service of reporter	Industry
	Form No.

Item No.	Changes in investment of foreign home office *(See Specific Instructions)*	Amounts *(Thousands of dollars)*
1	Home office account at beginning of quarter	
2	Cash remittances, or merchandise, machinery, etc., received from home office	
3	Foreign taxes charged to U.S. operations	
4	Other credits to home office *(Royalties, service fees, and other foreign expenses charged to U.S. operations, etc.)*	
5	Interest	
6	Net income (or loss) of U.S. branch *(Period)*	
7	TOTAL ADDITIONS *(Items 2 thru 6)*	
8	Cash remittances of income to home office	
9	All other cash remittances to home office	
10	Shipments of merchandise, etc., to, or for the account of, the home office	
11	TOTAL DEDUCTIONS *(Items 8 thru 10)*	
12	Home office account at end of quarter *(Item 1 + Item 7 - Item 11)*	
13	DO NOT FILL IN Change in home office account	

Remarks

GENERAL INSTRUCTIONS

Purpose - Reports on this form are required in order to provide reliable and up-to-date information on the direct-investment operations of foreign persons or firms in the U.S., affecting the U.S. balance of international payments. Related information is collected on Form BE-605, Transactions with foreign parents, BE-606B, Operations of U.S. branches of foreign banking firms and BE-606-I, Operations of U.S. branches or subsidiaries of foreign insurance firms. The following is a condensation of the applicable set of instructions and regulations; a complete set will be sent on request.

Authority - Reports on Form BE-605, BE-606, BE-606B and BE-606-I are mandatory under Section 8(b) of the Bretton Woods Agreements Act (59 Stat. 515, 22 U.S.C. 286f). The report has been approved by the Office of Management and Budget under the Federal Reports Act (Public Law No. 831, 77th Congress). All replies will be held in confidence under the provisions of Section 4(b) of that Act and Section 8(c) of the Bretton Woods Agreements Act.

Who Must Report - Reports on Form BE-606 are required from U.S. branches of foreign corporations, except as exempted below.

Exemption - A U.S. branch otherwise required to report is exempted if the book value of the foreign owners' investment in the enterprise (branch home office account and/or surplus or liability accounts) was less than $2,000,000.

Consolidation - If a reporter held controlling interests in other U.S. enterprises engaged in the same kind of business and required to report, a consolidated report may be filed.

Filing of Reports - Form BE-606 is a quarterly report. A single copy of each report should be sent to the Bureau of Economic Analysis, BE-50(II), U.S. Department of Commerce, Washington, D.C. 20230, within 30 days after the close of each calendar or fiscal quarter, except for the final quarter of the calendar or fiscal year when reports may be filed within 45 days.

Requests for extension of the filing dates, additional forms, or clarification of the reporting requirements or instructions should be directed to the same address.

DEFINITIONS

U.S. Branch - A U.S. business enterprise, not incorporated in the U.S., owned and operated by a foreign person or organization.

Foreign Home Office - A foreign corporation conducting a business in the U.S. through a branch office (See definition above).

SPECIFIC INSTRUCTIONS

Enter all amounts in thousands of U.S. dollars. The rounding must be done by dropping the last three digits as in the following example: (Example: $1,033,242 should be reported as $1,033). Amounts of less than $500 should be omitted. It will be assumed that blank spaces, or entries identified with "0" or "-", represent amounts of less than $500, or of zero. If the information is not readily available, provide your best estimate and mark entry est. (estimated).

Items 1 and 12 - Home office account should comprise all assets of the branch located in the United States, less liabilities to U.S. residents.

Item 6 - Report the "Net income (or loss) of United States branch" after provision for U.S. taxes and home office credits (royalties, service fees, foreign taxes, etc.,) charged to the branch. (It is assumed that such home office charges would be reflected in items 3 or 4.) Reporters engaged in extractive industries should report net income before depletion charges, except charges representing the amortization of the actual cost of capital assets.

Item 8 - If cash remittances are not segregated as to purpose, report all cash remittances in item 9.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

Memorandum

Department of the Treasury
Washington, D.C.

1j

TO : Mr. M. E. Blake

DATE: MAY 10 1974

FROM : David S. Foster DSF

SUBJECT: U.S. Tax Exemption for Foreign Governments

Your memorandum of May 6, 1974, asked for a memorandum describing how foreign governments are taxed on their U.S. income and whether any distinction is made between investments through incorporated entities and investments in unincorporated form.

Conclusion

Foreign governments are generally exempt from tax on investments in the U.S. However, the exemption does not apply to the income of a separate profit-making corporation which is owned by a foreign government. Only the distributions to the government from such corporation (including dividends, interest, rents and royalties) would be free of tax. It is not clear what rules apply for investments in unincorporated form.

Discussion

Section 892

Section 892 of the Internal Revenue Code of 1954 exempts from income tax income of foreign governments received from investments in the United States in stocks, bonds, or other securities, or from interest on deposits in banks in the United States, or from any other source within the United States. (The text of Section 892 is attached, together with the text of the regulations thereunder.) The section does not exempt from taxation foreign source income, which would appear to be subject to tax if effectively connected with the conduct of a trade or business within the United States. See IRC §864(c)(4).

The exemption only applies to the income of a "foreign government," which is not defined. Separate organizations which are controlled by a foreign government may be subject to different rules. Along these lines, the Internal Revenue Service has ruled that an organization which is separate in

form but wholly-owned by a foreign government should be treated as a foreign government for purposes of the exemption only if: (1) no part of the net earnings of the organization inures to the benefit of any private individual or shareholder and (2) the organization does not constitute a "corporation" as defined by the ruling. An organization is treated as a corporation where its purposes, functions, and activities, taken as a whole, customarily are attributable to and carried on by private enterprise for profit in the United States. See Revenue Ruling 66-73, 1966-1 C.B. 174, attached.

The above ruling does not describe what is meant by a separate organization. However, the term may include a partnership, a joint venture and a trust, as well as a foreign or domestic corporation. For example, in 1967, the Service took the position in a private (unpublished) ruling that the Kuwait Development Fund was a separate organization within the meaning of Revenue Ruling 66-73. It was also decided that the Fund was exempt from tax because its activities did not resemble those carried on by private enterprises in this country. Since a corporation is generally a separate entity, government-owned corporations such as Petromin and SAMA would presumably be treated as separate organizations under this rule. This might or might not make them taxable, depending on the nature of their activities.

Revenue Ruling 66-73 does not deal with a situation where a foreign government operates a business in the United States directly as if it were a proprietorship. Although the literal terms of Section 892 would seem to exempt that income from tax, the Internal Revenue Service might treat the operation as a separate entity. We cannot predict how this issue would be resolved. This is a matter which must be initially considered by the Internal Revenue Service. It is therefore advisable that foreign governments seeking to operate businesses directly in the U.S. request advance rulings from the Internal Revenue Service. It may be possible to arrange a meeting with the Internal Revenue Service to discuss these issues if you wish to do so.

In the event a business directly owned by a foreign government is taxable by the U.S., it would most likely be taxed as a foreign corporation. In this case, it would be taxed at a flat 30 percent rate on certain types of U.S.

income, such as dividends, interest, rents and royalties, (but not most capital gains) unless such income is effectively connected with the conduct of a trade or business within the United States. IRC §881(a). Income effectively connected with the conduct of a trade or business with the United States is subject to tax at graduated rates. IRC §882(a).

As a practical matter, we think it unlikely that a foreign government would conduct an enterprise in the United States directly. It would do business through a separate entity (normally a corporation) in order to limit its exposure to liabilities. Operation as a proprietorship would expose all the assets of the foreign government, wherever located, to claims and other liabilities connected with the business. Accordingly, it may be academic whether Section 892 would exempt a government's income from the direct conduct of a business. The difficult practical question is probably whether a partnership in which a foreign government is a limited partner is a separate entity for purposes of Revenue Ruling 66-73.

Tax Treaties

A bilateral tax treaty would be an appropriate means of clarifying the manner in which a particular foreign government and instrumentalities of that government would be taxed. In the U.S.-USSR Income Tax Convention (which has not been ratified), for example, many items having a U.S. source, such as rentals, royalties, dividends, and income from the use of industrial designs or processes are exempt from U.S. tax.

It is highly unlikely that the Senate would ratify a treaty which exempts from U.S. tax operations of the type covered by Revenue Ruling 66-73, because such provisions would allow a foreign government to be in a position to compete unfairly with U.S. businesses.

Tax Planning

Assuming that business operations of a foreign government are subject to tax, careful tax planning (involving the use of depreciation deductions, corporate debt, licensing arrangements, etc.) could greatly minimize any ultimate tax liabilities.

Attachments

cc: Messrs. Lerner & Patrick

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PART II.—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart C.—Miscellaneous Provisions

SECTION 892.—INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS

26 CFR 1.892-1: Income of foreign governments and international organizations. (Also Sections 893, 4382; 1.893-1, 47.4382-1.) Rev. Rul. 66-73

The Internal Revenue Service discussed the applicability of sections 892, 893, and 1382 of the Internal Revenue Code of 1951 to an organization separate in form but wholly owned by a foreign government. I.T. 3789, C.B. 1946-1, 100, modified.

Advice has been requested concerning the applicability of sections 892, 893, and 4382 of the Internal Revenue Code of 1954 to an organization separate in form but wholly owned by a foreign government.

In 1946 the Internal Revenue Service in I.T. 3789, C.B. 1946-1, 100, announced its position that the benefits of section 116(c) of the Internal Revenue Code of 1939 (predecessor of section 892 of the 1954 Code) which exempts foreign governments from income tax "cannot be extended to a corporation which is wholly owned by a foreign government inasmuch as a corporation is an entity separate and distinct from its sole stockholder." This is simply an application of a basic legal principle. However, the Tax Court of the United States in *Louis Vial*, 15 T.C. 403 (1950), acquiescence, C.B. 1952-1, 4, tempered this principle by limiting its application to a "corporation as that term is understood in the United States."

As a result of the *Vial* decision and extended reconsideration, it is now the position of the Service that an organization separate in form and wholly owned by a foreign government, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, regardless of where organized and whether with stock outstanding, is exempt under section 892 of the Code, provided it does not constitute a corporation as that term is generally understood in the United States and as explained in the following paragraph.

Whether an organization constitutes a corporation as contemplated by this rule will depend directly upon its purposes, functions, and activities. Where its purposes, functions, and activities, taken as a whole, customarily are attributable to and carried on by private enterprise for profit in this country, it will be deemed to constitute a corporation separate from its owner even though in some instances governments also are engaged in the same or a similar activity in the United States. On the other hand, where the organization does not have purposes, functions, and activities of the type which are customarily attributable to and carried on by private enterprise for profit in this country, or, to the extent it has such purposes, functions, and activities, taken as a whole they are so circumscribed and limited that the organization does not in fact substantially resemble such a private enterprise, it will not be deemed to constitute a corporation separate from its owner, and hence will be entitled to the benefits granted by section 892 of the Code.

The same test will be applied for purposes of determining what organizations will be considered to be part of a "foreign government" within the meaning of sections 893 and 4382 of the Code.

I.T. 3789, C.B. 1946-1, 100 is hereby modified.

[¶ 4190] INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS

—'54 Code—

Sec. 892 [1954 Code]. The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

.10 Committee Reports on 1954 Code Sec. 892 were reproduced at 563 CCH ¶ 4190.10.

• *Regulations*

[¶ 4191] § 1.892-1. Income of foreign governments and international organizations.—(a) *Foreign governments.* The exemption of the income of foreign governments applies also to their political subdivisions. Any income collected by foreign governments from investments in the United States in stocks, bonds, or other domestic securities which are not actually owned by, but are loaned to, such foreign governments is subject to tax.

(b) *International organizations*—(1) *Exempt from tax.* Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U. S. C. 288) (the provisions of which section are set forth in paragraph (b) (3) of § 1.893-1), the income of an international organization (as defined in section 7701(a)(18)) received from investments in the United States in stocks, bonds, or other domestic securities, owned by such international organization, or from interest on deposits in banks in the United States of moneys belonging to such international organization, or from any other source within the United States, is exempt from Federal income tax.

(2) *Income received prior to Presidential designation.* An organization designated by the President through appropriate Executive order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exemption with respect to income of the prescribed character received by such organization prior to the date of the issuance of such Executive order, if (i) the Executive order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation for such participation, at the time such income is received. [Reg. § 1.892-1.]

.01 Historical Comment: Proposed 5/1/56. Adopted 10/23/57 by T. D. 6258.

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DJ-150
1-26-68)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

Antitrust Division

TO : Keith I. Clearwaters
Deputy Assistant Attorney General

DATE: May 13, 1974

60-03

FROM : Joel Davidow, Chief
Foreign Commerce Section

SUBJECT: U.S. Antitrust Law and Foreign Government Investment in America

Preparatory to a May 15th meeting of the CIEP Reverse Investment Study, you asked me to research the application of U.S. antitrust laws to acquisitions or other activities in the U.S. by foreign governments or foreign government-owned entities. The question must be answered by analyzing both the scope of the Sherman and Clayton Antitrust Acts and the relevance of the "sovereign immunity" doctrine.

I. The Sherman Act

By its terms, the Sherman Act can be violated by any person or persons. Section 8 of the Act indicates that the word person includes any corporation or association "existing under or authorized by . . . the laws of any foreign country." No mention is made of foreign sovereigns. Generally, American courts have taken the position that, "the Sherman Act does not confer jurisdiction on United States courts over acts by foreign sovereigns. By its terms, it forbids only anti-competitive practices by persons and corporations." Interamerican Refining Corp. v. Texaco Maracaibo Inc., 307 F. Supp. 1291, 1298 (D. Del. 1970). However, that court relied on a statement in an article by Wilbur Fugate, which statement is actually narrower than that of the court. Fugate wrote that the Sherman Act does not apply, "if the acts are those of a foreign sovereign within its jurisdiction . . . ." Fugate, "Antitrust Jurisdiction and Foreign Sovereignty," 49 Va. L. Rev. 925, 932 (1962) (Emphasis added)

Old Section 7 of the Sherman Act, providing for treble damage recoveries, was recodified as Section 4 of the Clayton Act. In two treble damage cases involving Sherman Act offenses (i.e., price fixing), the district courts have held that the Government of Kuwait and the Republic of Viet Nam are "persons" entitled to seek damage recoveries. In the Republic of Viet Nam v. Charles Pfizer case, the Department of Justice filed an amicus memorandum urging that the Republic of Viet Nam should be considered a person for Clayton Act purposes.

It is well-settled that the Sherman Act applies not only to conspiracies and monopolization but also to major anti-competitive mergers. United States v. Bank of Lexington, 376 U.S. 665 (1964).

II. The Clayton Antitrust Act

The major antitrust weapon against anti-competitive mergers, acquisitions or joint ventures is Section 7 of the Clayton Act, as amended in 1950. Section 7 by its terms applies only to transactions by a "corporation engaged in commerce." If the acquisition is of assets rather than stock, the Section only applies to corporations subject to the jurisdiction of the Federal Trade Commission." Section 4 of the Federal Trade Commission Act defines corporation as an entity "organized to carry on business for its own profit or that of its members, . . ." thus implying its lack of applicability to non-profit organizations, such as public entities.

III. Sovereign Immunity

The U.S. State Department and most American courts have consistently held to the principle that a sovereign foreign state cannot be sued in the United States without its consent. See, e.g., National City Bank v. Republic of China, 348 U.S. 356 (1954). The major exceptions to this rule occur when the foreign state engages in a commercial rather than governmental activity and does so through a separate corporation organized for such a purpose. In relation to antitrust enforcement, the most relevant case appears to be United States v. Deutsenes Kalisyndikat Gesellshaft, 31 F.2d 199 (S.D.N.Y. 1929). There the

United States sued to enjoin antitrust violations in the sale of potash. The French ambassador intervened, arguing that one defendant was a corporation 11/15ths owned and controlled by the French Government, with delegates of four French ministries sitting on its governing board. It was argued that the suit was thus one against the French Government. The court rejected this argument on the ground that the corporation was a juridic entity distinguishable from the foreign government.

Years later, in the international oil grand jury investigation, a district judge quashed a subpoena to Anglo-Iranian Oil Co. because of a note from the British Government claiming that England controlled the company and desired that the documents not be produced. The Antitrust Division relied on the French potash case, but the judge distinguished it as follows:

> However, the French Government was involved in a commercial venture, entirely divorced from any governmental function. There is a vast distinction between a seafaring island-nation maintaining a constant supply of maritime fuel and a government seeking additional revenue in the American markets and causing a direct injury in the United States to our domestic commercial structure. In Re Investigation of World Arrangements, Etc., 13 F.R.D. 280, 291 (D.D.C. 1952)

Conclusion

It may seem a technical distinction, but I believe that our ability to challenge a foreign government acquisition of a U.S. company would probably turn on whether the acquisition was carried out through the use of a separate corporation or trust which generally engages in commercial activity. Even then, difficult problems of statutory interpretation and sovereign immunity are present.

MEMORANDUM

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COUNCIL ON INTERNATIONAL ECONOMIC POLICY

THE WASHINGTON POST Friday, May 3, 1974 D 11

Saudi Arabia Could Buy Into Oil Companies

Reuter

NEW YORK, May 2—Any Saudi Arabian interest in buying into four giant American oil companies faces little opposition, according to government and industry sources.

U.S. laws, designed to prevent companies from lessening competition, "never envisioned direct government purchases," a top Justice Department official said today.

Deputy assistant attorney general Keith Clearwaters pointed out that present antitrust laws apply only to corporations, not to countries, which, in theory at least, would give the Saudi government a free hand.

Two newspapers in Kuwait reported yseterday that the Saudis are interested in buying large stock interests in the four American partners of the Arabian American Oil Company (ARAMCO)—Exxon Corporation, Texaco, Mobil Oil and Standard Oil of California.

Spokesmen for the four companies declined to offer any confirmation of the reports, but an Exxon official said "Anyone who wants can buy our stock, including Saudi Arabia."

One administration official said that the government could oppose the purchases on grounds of national security, but even that seems unlikely at the moment.

"Since those companies sell fuel to the Defense Department and have other government contracts, theoretically, a foreign government in control would certainly not be in our best interests," the official said. "But since this is all so hypothetical at any rate, I can't see us doing anything about it yet."

If the Saudis actually go ahead with the stock buying plan the cost would be enormous, even for a country that could earn $20,000 million this year from selling oil.

Exxon alone has close to 250 million shares issued selling for about $80 each.

Just to buy a 5 per cent interest in Exxon—2 per cent more than the amount held by Chase Manhattan Bank, the biggest owner at present—the Arabs would have to pay in the neighborhood of $1 billion, stock market analysts estimate.

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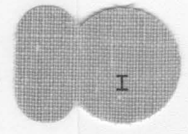

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May 15, 1974

MEMORANDUM

To: John Niehuss
Assistant Director
Council on International Economic Policy

From: Andrew P. Steffan APS
Director
Office of Policy Planning
Securities and Exchange Commission

Re: Response to CIEP Study of Investment in the United States by Foreign Governments or Government Controlled Corporations

I. Application of securities legislation and rules and regulations thereunder to investment by foreign governments or government controlled persons.

The federal securities laws generally do not differentiate between foreign governments and other persons investing in U.S. securities. The only instance in which there are distinctive requirements made of foreign governments is in the issuing of securities. In this case, there are specific forms of registration statements (under Schedule B) and annual reports

(Form 18-K) which are applicable to foreign governments. The reporting and disclosure requirements of the Securities Exchange Act of 1934, specifically Sections 13, 14 and 16 thereof, do apply to foreign governments and government controlled corporations. The statement by Chairman Garrett on S. 2840 before the Senate subcommittee on Foreign Commerce and Tourism, a copy of which is attached, comments more specifically on these requirements and their application to foreign investors.

II. Existing government or government controlled activities in the U.S.

In response to your specific question, we are unaware of any U.S. broker-dealers which are owned or controlled by foreign central banks.

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STATEMENT BY RAY GARRETT, JR.
CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION
BEFORE
THE SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM OF THE
SENATE COMMERCE COMMITTEE
ON
S. 2840: A BILL TO AUTHORIZE THE SECRETARY OF COMMERCE
TO CONDUCT A STUDY OF FOREIGN DIRECT AND PORTFOLIO
INVESTMENT IN THE UNITED STATES AND FOR OTHER PURPOSES.

Thursday, March 7, 1974

Introduction

We appreciate having the opportunity to comment on your bill authorizing the Secretary of Commerce to conduct a study of foreign investment in the United States. We support the study you propose and look forward to cooperating with the Secretary of Commerce in this endeavor to the fullest extent possible.

The growing internationalization of the securities markets since the late 1950's has raised important issues for the Commission. Although certain data can be gathered from our files and our prior experience, in many cases we address questions relating to foreign investment with less than complete information. Generally speaking, we receive data only on investments in publicly held companies and then not until an investor has acquired more than a 5% beneficial interest in a class of equity securities or intends to make a cash tender offer for more than a 5% interest. Since our ability to segregate and compile meaningful information about foreign investors and trends in foreign investment is quite limited, the collection and analysis of information on foreign investment in the U.S. contemplated by the proposed bill could be quite useful to the Commission in its administration of the federal securities laws.

Background

In general, the statutes which set forth our federal securities laws do not in themselves make meaningful distinctions based upon the nationality of issuers or investors, except in the case of foreign governments. Most accomodations under securities laws with respect to differences in nationality have come about through the Commission actions in adoption of rules and policies.

In the early 1960's a number of foreign issuers sought to raise capital in the U.S. markets, some of whom found difficulty in meeting the registration provisions of the securities acts. In certain cases, the Commission was able to modify its requirements to facilitate offerings by foreign issuers without compromising the interests of U.S. public investors.

In spite of the imposition of the Interest Equalization Tax in 1963, which reduced the appeal of foreign securities, the number of foreign issues traded in the U.S. markets increased during the 1960's as U.S. investors discovered the rapidly growing economies of Europe and Japan. In response to the growing interest of U.S. investors in overseas corporations, Congress in 1964 granted the Commission authority to exempt foreign issuers in whole or in part from the registration and reporting requirements

of the Securities Exchange Act of 1934 which apply to U.S. companies.

The 1970's have been characterized by an increasing internationalization of the securities markets and, as a result, have raised several new questions for the Securities and Exchange Commission. Establishment of foreign controlled broker-dealers in this country has led to questions about the form in which foreign financial institutions should have access to U.S. securities markets. On February 8, 1974, the Commission issued a request for public comment on this matter.[1/]

Shifts in currency rates and a depressed U.S. stock market, among other things, have made shares of U.S. corporations more attractive to foreign investors. In cases where this has led foreigners to acquire or make cash offers for over 5% of the shares of publicly held U.S. corporations they are required, like U.S. investors, to file certain pertinent information with the Commission.

Finally, the recent elimination of the Interest Equalization Tax may result in foreign issuers seeking to register offerings with the Commission. In anticipation of this development and in response to the growing internationalization of the capital markets,

1/ Securities Exchange Act of 1934 Release No. 10634, February 8, 1974 "Request for Public Comment on Issues Concerning Foreign Access to the United States Securities Markets".

the Division of Corporation Finance established a year ago an Office of International Corporate Finance to coordinate the registration and reporting requirements applicable to foreign issuers or persons under the Securities Act of 1933 and the Securities Exchange Act of 1934.

Disclosure of Foreign Investment in Filings with the S.E.C.

Generally, investors in securities which are required to be registered under Section 12 of the Securities Exchange Act of 1934 are subject to the reporting requirements of three different provisions of this act. Since all corporations whose shares are listed on a national securities exchange, and the more important companies actively traded in the over-the-counter market, are subject to Section 12, one may accept these provisions as having broad, if not universal, application. Therefore, I will not subsequently qualify my remarks by referring to the possibility that a class of equity securities might, in fact, be exempt from these provisions because it is not held by a sufficient number of investors or the issuer is not large enough.

Section 13 requires that any person acquiring beneficial ownership of more than 5% of any class of registered equity securities must file with the Commission his name, address (both business and residence) and occupation; the source of funds

employed to acquire this interest; the purpose of the transaction and other pertinent data. A copy of this schedule must be sent to each exchange where the security is traded, if any, and to the issuer of the security. Section 14 requires that similar information be filed by a person intending to make a cash tender offer or takeover bid for more than 5% of any class of registered equity securities prior to commencing the tender offer. These provisions of Section 13 and 14 also apply to investors in insurance companies otherwise exempt from registration under Section 12. The information called for under these sections is set forth in regulations 13D and 14D and in schedule 13D, which are attached to my comments.

Section 16 requires that beneficial owners of more than 10% of any class of registered equity securities and officers or directors of the issuer of such securities must file with the Commission a statement containing the amount of equity securities owned and must update this statement each time the ownership changes. This information is filed initially on Form 3, with subsequent changes filed on Form 4, both of which are attached to my comments.

Issuers required to register their securities under Section 12 of the Securities Exchange Act must include in their registration statements, periodic reports and proxy statements the identity of those shareholders owning more than 10%, either beneficially or of record, of any class of voting securities, as well as the security holdings of officers and directors.

The Securities Act of 1933 requires registrations of a public offering of securities, including an offer to exchange securities for those of a publicly held company. Most Securities Act registration forms call for information similar to that required in Securities Exchange Act registration statements and reports with regard to large investors, officers, directors and controlling persons.

Broker-dealers and investment advisers must provide in registering with and reporting to the Commission a list of the names of beneficial owners of 1% or more of their equity securities and the name and address of each director, officer, partner, 10% (or larger) shareholder and controlling person.

In summary, substantial investors in publicly held companies are generally required to report their holdings to the Commission. Furthermore, once an investor has acquired over 10% of a class of

equity or voting securities, both the investor and the issuing company are required to report this fact. In most cases, the investment is reported after it is made; however, in the case of cash tender offers or offers to exchange securities for securities of a publicly held company, the investor must file information with us prior to making such an offer. Nevertheless, the nature of our reporting and registration requirements may result in the information provided to us being somewhat incomplete, and possibly inadequate or inaccurate, from the point of view of someone seeking to study the influence of foreign investors in the U.S. market.

The securities laws only require information to be filed relating to investment in certain publicly held corporations, broker-dealers, and investment advisers. The Commission would be unlikely to have any information relating to private investment or direct investment in plant and equipment in this country. In addition, the statutes we administer do not require any filing until investors own more than 5% of the equity shares of publicly held companies. Not only would holders of smaller quantities of shares not report to us, but also purchasers of debt securities would typically not file either. Finally, while we have no reason to believe that investors do not comply with our disclosure

requirements, we cannot be certain in all cases that adequate information is filed to identify foreign investors because of the lack of ready access to the underlying facts through compulsory process.

Monitoring Information on Foreign Investors

Under our statutory requirements there is little reason for us to segregate data according to the domicile or citizenship of the investor or issuer. Recently, we have been monitoring the reports filed under Section 14 of the Securities Exchange Act in connection with cash tender offers. However, reports of ownership by investors acquiring over 5% of an equity interest called for by Section 13 as well as reports filed under Section 16 by holders of more than a 10% interest of officers and directors, are not processed in a manner to permit segregation of foreign investors.

A search of the ownership reports filed with us in the past to identify foreign investors would have to be undertaken on a manua basis, and would require a significant expenditure of money and manpower. For example, during the fiscal year ended June 30, 1973 approximately 1,000 Schedule 13D's (excluding amendments) and 115,000 Forms 3 and 4 were filed with the Commission. Processing

these filings in the future to identify foreign investors might be feasible, although the question of the accuracy of the data for this purpose remains. Similar problems would be confronted in searching registration statements and reports filed by companies, and the cost in proportion to the information obtained might be even higher.

Comments on Section 3 of S. 2840

With regard to the specific points raised in Section 3 of the proposed bill, information filed with the Commission may be helpful in the following areas, subject to the limitations outlined above:

Item 1 calls for a broad investigation of the nature, scope, magnitude and rate of foreign direct and foreign portfolio investment. Our data could be useful in identifying substantial foreign portfolio ownership.

Items 2 and 3 deal with the processes through which foreign investment flows, and the reasons and financing methods involved. We may have reasonably extensive data on tender and exchange offers, including a description of the source of funds and purpose of the offering. For the most part, it is our impression that these

acquisitions have not been financed in the U.S. market and have been handled in a manner which would not be made known to the Securities and Exchange Commission.

Our data should be helpful in determining the proportion of foreign investment involved in acquisition and take-over of publicly held U.S. companies, covered in Item 4. However, our information probably would not be helpful in dealing with items 5, 6 and 7 which cover the impact of foreign investment.

Moving to Item 8, it is possible that the federal securities laws could act as a barrier to certain forms of foreign investment since these laws are more rigorous than those prevailing in many other countries. Of course, our laws also serve to attract foreign investment, to the degree they contribute to the integrity and liquidity of our markets.

These appear to be the main points on which our data could be helpful. However, I must reiterate that searching the information filed with the Commission, particularly that filed in the past, to identify foreign registrants and investors could be a very burdensome process and require substantial expenditure of manpower and dollars which would be well beyond our limited budget.

In conclusion, I would like to point out that the Commission supports this legislation in a broad sense and believes that it would provide a valuable repository of information upon which Congress and other interested government bodies could draw in considering the various proposed and introduced bills to regulate foreign investment in the United States. I might also suggest that, in conducting the study, the Secretary of Commerce consider the impact of foreign portfolio investment on the U.S. securities markets and on the financial condition of the securities industry in general.

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date May 13, 1974

To Mr. Pizer

From Bernard Norwood, Project Director for International Banking Regulation

Subject: Foreign Government Investment in U.S. Banks and Other U.S. Financial Institutions

This memorandum responds to the request by the CIEP's committee on foreign investment for information concerning foreign government participation in U.S. banking institutions.

(a) An identification of U.S. banking institutions (and possibly other financial institutions) in which there is a substantial interest by a foreign government.

Banking institutions located in the United States in whole or in substantial part owned by foreign governments are as follows:

European

France

Banque Nationale de Paris Agency - San Francisco
French Bank of California - San Francisco
French-American Banking Corporation - New York
Credit Lyonnais Branch - New York

Greece

Atlantic Bank of New York - New York

Italy

Banca Commerciale Italiana Branch - New York
Banca Commerciale Italiana Branch - Chicago
Banca Nazionale del Lavoro Branch - New York
Banco di Napoli Agency - New York
Banco di Roma Agency - San Francisco
Banco di Roma - Chicago
Credito Italiano Branch - New York

European-American (one shareholder is Societe Generale, a French Government-controlled financial institution)

European-American Banking Corporation Agency - Los Angeles
European-American Bank and Trust Company - New York
European-American Banking Corporation - New York

All Others

(1) Argentina

Banco de la Nacion Branch - New York

(2) Brazil

Banco do Brasil S.A. - San Francisco
Banco do Brasil Branch - New York
Banco do Estado de Sao Paulo Agency - New York

(3) India

State Bank of India Branch - New York

(4) Iran

Bank Melli Iran Agency - New York

(5) Korea

Korea Exchange Bank Agency - New York
Korea Exchange Bank Agency - Los Angeles

(6) Pakistan

Habib Bank Branch - New York
National Bank of Pakistan Branch - New York

(7) Philippines

Philippine National Bank Agency - San Francisco
Philippine National Bank Agency - Honolulu
Philippine National Bank Branch - New York

(b) Relationship of bank holding company legislation to the foreign government ownership of banks (and possibly other financial institutions) located in the United States.

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. The Federal Reserve Board, in applying the legislation, has required foreign government-owned banks (the French Government-owned Banque Nationale de Paris and the Italian Government-owned Banco di Roma) to register as foreign bank holding companies because of their ownership control of U.S. banks.

(c) Extent to which there are any special provisions in laws and regulations (Federal or State) creating different treatment depending on whether the foreign ownership is private or is governmental.

There appear to be no such distinctions in Federal or State law (other than for possible special exemptions under Federal tax legislation for U.S. income earned by foreign central banks and, more generally, for foreign governments).

(d) The experience of the Federal Reserve System in obtaining necessary information from, or applying reporting requirements to, U.S. banks with foreign official ownership.

In the Board's experience, foreign government-owned U.S. banking institutions in general have been as cooperative as foreign privately-owned U.S. banking institutions in responding to formal and informal requests for statistical and other information.

cc: Bryant
Gemmill
Dahl
Ruckdeschel
Chase
Welsh

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DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM

May 17, 1974

To: John M. Niehuss
Assistant Director for Investment
and Services
Council on International Economic Policy

From: Stephen Bond
Office of the Legal Adviser

Subject: Dispute Settlement with Foreign Government Investors

Problems related to bringing disputes with foreign government agencies before federal or state courts have been treated in a separate memorandum.

I. Dispute Settlement in General

Foreign governments investing in the U.S. will in general be able to employ the same dispute settlement techniques as do private foreign investors. If they enter into investment agreements with U.S. companies -- shareholders agreements, joint venture agreements, partnership agreements, etc. -- they will be able to negotiate clauses to govern the method of dispute settlement -- arbitration, adjudication -- and the forum and the law which will resolve disputes that may arise. For example, in a joint venture agreement with a U.S. company, a foreign government could negotiate a clause calling for arbitration under the rules of the International Chamber of Commerce or the American Arbitration Association; it could also have a hand in designing procedures and criteria for dispute settlement.

A foreign government investing directly in the U.S. through a wholly owned subsidiary would have access to the same techniques for dispute settlement as would any domestic corporation. If it could persuade a potential litigant, it may be able to work out arrangements to settle disputes by arbitration. Otherwise it would have recourse to the judicial process. National treatment and most-favored-nation treatment with respect to access to courts of justice and administrative tribunals are provided for in most of our FCNs, which also protect certain arbitration rights.

II. The International Centre for Settlement of Investment Disputes (ICSID)

The ICSID Convention provides an institutional and procedural framework for the settlement, through conciliation and arbitration, of investment disputes between contracting states and foreign investors who are nationals of other contracting states. (Disputes between states or between private parties are not within the jurisdiction of ICSID.) It is intended to thus provide procedures on the international level for adjudicating disputes between States and private parties to which the latter may have recourse without the intervention of their governments. Thus, ICSID's goal is to increase investments in LDCs by providing for the settlement of disputes between host countries and parties who invest therein. In the case of an investment in the U.S. by governments of OPEC members, several factors mitigate against the usefulness of recourse to ICSID to settle disputes which arise.

1. Most of the major oil exporting countries are not members of ICSID at this time, and there is no evidence that these countries are interested in joining. Libya, Saudi Arabia, Qatar, Abu Dhabi, Venezuela, Kuwait, Algeria, Iran and Iraq are not ICSID members. Only Nigeria and Indonesia are ICSID members, and it is not clear that their oil exports will generate surplus revenues for investment. As the jurisdiction of ICSID comprises only disputes between a contracting state and nationals of another contracting state, use of ICSID is severely limited.

2. Even should Saudi Arabia or other OPEC members join ICSID, it is open to question whether recourse may be made to ICSID for many disputes between the USG and these foreign governmental agencies, as disputes between governments are excluded from ICSID jurisdiction. (For this reason OPIC, when subrogated to the claims of a private investor which has collected insurance, may not be a party before ICSID.) What criteria would be used by ICSID in determining whether a party is private or public has not been set forth.

3. Most disputes will not be between the USG and the investor, but rather between the foreign government agency and a private U.S. party. Therefore, should the

foreign agency be considered a "private party", the dispute is beyond ICSID jurisdiction. In addition, ordinary commercial disputes are also not within ICSID jurisdiction, which is limited to "legal disputes arising directly out of an investment" -- so that while conflicts of right are within the jurisdiction, mere conflicts of interest are not. The dispute must concern the very existence of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.

4. Whether ICSID has jurisdiction over a dispute wherein the "government party" is the investor and the private party is a national of the host country is not clear. It would turn upsidedown the purpose for which ICSID was created, but is within the literal language of the Convention, as a government and private individual would be the parties. The question has not yet been answered.

5. ICSID is an untried institution. Parties would no doubt prefer to use the AAA or ICC, whose jurisdiction comprises commercial disputes and which have expertise in such matters.

6. Finally, the fact that the U.S. is a contracting state in no way obligates it to go to ICSID in a dispute with a national of another contracting state. Rather, the convention provides that written consent to utilize ICSID in a dispute arising out of a particular investment must be made.

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

Date: May 17, 1974

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

From: Irmgard Neumann I.N.
Investment Policy Division - OIFI

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

With reference to my telephone conversation with Gene Clapp today, attached is an additional list of existing government and government-controlled activities in the U.S., which supplements our submission of May 14, 1974.

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

(Supplemental List)

1. Near Eastern Countries: Bahrein, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, PDRY (People's Democratic Republic of Yemen), Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen Arab Republic:

   a. Information offices and Chambers of Commerce:

      Many of these governments participate in the maintenance of the Arab Information Center in New York City. Some of them also participate as founding members of The U.S.-Arab Chamber of Commerce in New York City.

   b. Other types of commercial offices:

      Kuwait Air, New York
      Lebanon Tourist and Information Office, N.Y.
      Middle East Airlines (sales and reservations), N.Y.
      Egyptair, N.Y.
      The Royal Jordanian Airline, N.Y.
      Saudi Arabian Airline, N.Y.

2. Israel

   Israel Investment Authority, N.Y.
   Israel Airlines El Al
   Zim America - Israeli Shipping Company

3. India

   Air-India

4. Pakistan

   Pakistan International Airlines

5. Sri Lanka (Ceylon)

   Ceylon (Sri Lanka) Tourist Board
   North American Office, N.Y.

6. Afghanistan

   Trading Company of Afghanistan, N.Y.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

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UNITED STATES GOVERNMENT

Memorandum

Department of the Treasury
Washington, D.C.

TO : Mr. John Niehuss
Assistant Director CIEP

DATE: June 3, 1974

FROM : Melville E. Blake, Jr. MEB

SUBJECT: CIEP Paper on "Investment in the United States by Foreign Governments or Foreign Government-Controlled Institutions

I have gone over the subject CIEP paper and have asked the Office of International Tax Counsel to review those parts of the paper and the attachments dealing with international tax matters. The Office of International Tax Counsel suggests the following changes in attachment B entitled "A Summary of Existing Regulation of Foreign Investment in the United States" to give greater precision to the text.

1. Page 30, last paragraph, third to last line. Change "January 1, 1975," to read "January 1, 1976."

2. Page 31, first paragraph, third to last line. Change "after January 1, 1975" to read "after December 31, 1975."

3. Page 32, continuation paragraph from page 31. Delete first two full sentences reading "When the Act was extended . . . . from the tax." Substitute the following language "When the Act was extended early in 1973, it was amended to provide an exclusion for original or new issues by foreign issuers or obligors to finance certain direct investments by them in the United States."

Attachment No. D, which is a Commerce Department memorandum on investment in the U.S. by foreign government or government-controlled corporations, lists a number of foreign government and government-controlled corporations in the United States market. The listing inferentially focuses attention on the fact that we did not specifically define terms at the meeting on May 6, and that various agencies may be interpreting "foreign government or government-controlled corporations" differently. For the purposes of this exercise do the terms extend to

private foundations that receive a government grant in partial as well as total support? What level of foreign-government equity participation is necessary for a corporation to be considered under the control of a foreign government? Some examples drawn from the Commerce listing illustrate the apparent difficulties. Several Chambers of Commerce and travel offices may be privately controlled; the Swiss National Tourist Office for example, is private, but receives a Federal Grant that covers something less than 50 percent of total expenses. The Austrian Trade Delegation is not a corporate activity but rather is an overseas extension of the Austrian Chamber of Commerce, and similar circumstances may obtain in the cases of other foreign trade associations. In regard to the level of foreign government equity participation, the Swiss Federal Government has a 15 percent ownership participation in Swissair.

When the study of foreign government or foreign-government controlled corporations is continued, I suggest that precise definitions be developed as a matter of priority.

NOTES

Amenability of Foreign Sovereigns to Federal In Personam Jurisdiction

The power of the federal courts to assert jurisdiction over a foreign sovereign has been an uncertain but fast developing area of the law. Apart from the question of sovereign immunity, which presents a substantive defense rather than a jurisdictional defect,[1] U.S. citizens with meritorious claims in contract or tort have repeatedly encountered the uncertain nature of the federal courts' ability to "reach" a foreign sovereign defendant. The opportunity for judicial review of claims arising out of everyday transactions has turned on the defendant's identity as a foreign state rather than on the presentation of a justiciable case.[2] On the other hand, the prosecution of claims by foreign states as plaintiffs in U.S. courts is unfettered by such anomalous distinctions.[3]

To remedy this disparity in power of federal courts to assert jurisdiction, several recent cases have expanded the amenability of foreign sovereigns to service of process by federal tribunals. Although federal jurisdiction might also be predicated on the foreign sovereign's voluntary appearance before the court or through attachment of property, the primary develop-

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1. In *Ex Parte Peru*, 318 U.S. 578, 587-88 (1943), the Supreme Court held that sovereign immunity:

> presents no question of the jurisdiction of the district court over the person of a defendant. Such jurisdiction must be acquired either by service of process or by the defendant's appearance or participation in the litigation. . . . Therefore the question . . . is not whether there was jurisdiction in the district court, acquired by the appearance of petitioner, but whether the jurisdiction which the court had already acquired . . . should have been relinquished in conformity to an overriding principle of substantive law.

Sovereign immunity, accordingly, simply provides a method for relinquishing jurisdiction once jurisdiction has been acquired by valid service of process. *See generally* Lillich, *The Proper Role of Domestic Courts in the International Legal Order*, 11 VA. J. INT'L L. 9, 18-27 (1970), for a discussion of the use of the sovereign immunity defense.

2. *See* Lowenfeld, *Claims Against Foreign States—A Proposal for Reform of United States Law*, 44 N.Y.U.L. REV. 901 (1969), which includes the following passage at 902:

> Residents of the United States are often denied the opportunity to secure adjudication of claims arising out of everyday activities in the United States, such as automobile accidents or disputes about contracts or leases, solely because the opposite party happens to be a foreign state. In the reverse situation, where the foreign state is the complaining party in cases arising out of accidents or contract disputes, there is no restraint against its bringing suit against private persons in the United States.

3. For a statutory solution to the amenability problem, see the State Department's proposal discussed *infra* at note 51.

ment has been in the area of in personam jurisdiction. In order to obtain personal jurisdiction over a foreign sovereign defendant, both functions of service of process must be satisfied: assertion of power over the particular defendant (amenability) and notice comporting with due process.[4] The twin concepts of notice and amenability were recognized as restraints on the court's power to exercise personal jurisdiction as early as the Supreme Court's decision in *Pennoyer v. Neff*.[5] Notice has developed from a concept focusing on territorial restrictions to the modern notion of service of process reasonably calculated to give actual notice.[6] Similarly, amenability, which has often been described in terms of a relationship between the forum, the defendant, and the facts of the case,[7] has evolved into a constitutional precept requiring an inquiry into the reasonableness of trying the particular action against the particular defendant in the case at hand.[8] As a condition which subjects a defendant to a personal judgment, the test of amenability turns on the defendant's consent to jurisdiction or his presence within the forum's jurisdictional bounds.[9] The latter component

4. *See* Comment, *Sovereign Immunity—The Restrictive Theory and Surrounding Jurisdictional Issues*, 15 CATH. U.L. REV. 234 (1966).

5. 95 U.S. 714 (1877). Justice Field's majority opinion elucidates two concepts: that a summons may be delivered either to the defendant personally or to his agent (notice), and that a state court judgment could bind nonresidents as to obligations arising out of partnerships, associations, or contracts consummated in the state (presence). *Id.* at 735.

6. The manner of service necessary to pass constitutional muster was noted by Justice Jackson in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950):

> But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected. . . .

7. Foster, *Judicial Economy, Fairness and Convenience of Place of Trial: Long-Arm Jurisdiction in District Courts*, 47 F.R.D. 73, 85 (1969) [hereinafter cited as Foster, *Judicial Economy*]:

> Standards for amenability vary considerably from state to state, both as to the extent of their coverage and the particularity with which amenability is defined. Typically, amenability is defined in terms of the relationship between the forum state, the defendant, and the facts of the case—or, in the language of some of the cases, amenability is simply a statement of the "contacts" or the "affiliating circumstances" which make it fair and reasonable for the state to exercise personal jurisdiction over the nonresident.

Although Professor Foster's remarks concern state jurisdiction, the definition of amenability in terms of forum, defendant, and facts is equally applicable to federal amenability. *See also* Hanson v. Denckla, 357 U.S. 235, 246 (1958); International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

8. Foster, *Judicial Economy*, *supra* note 7, at 83. The Supreme Court has dealt extensively with the constitutional reach of state long-arm statutes. *See* International Shoe Co. v. Washington, 326 U.S. 310 (1945).

9. *See* Note, *Sovereign Immunity*, 8 HARV. INT'L L.J. 182 (1967).

usually involves a determination of the defendant's "minimum contacts" with the forum.[10] Although the concepts of presence and consent present a ready frame for analysis of amenability to process, the question of under what circumstances and by what standards a foreign sovereign becomes amenable to suit is still uncertain.

The first case to raise fully the issue of in personam jurisdiction over foreign sovereigns was *Victory Transport Inc. v. Comisaria General de Abastecimientos y Transportes.*[11] The Spanish General Consul who had entered a charter contract for transport of surplus wheat was held to have consented to the jurisdiction of the district court by reason of his agreement to arbitrate in New York. Judge Smith, writing for the Court of Appeals for the Second Circuit, concluded that the foreign state was included in the terms of Federal Rule of Civil Procedure 4(d)(7) permitting service on a "domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name."[12] Thus, the exercise of in personam jurisdiction turned on a finding of consent.

Shortly thereafter the Second Circuit entertained another suit with an analogous fact situation. In *Petrol Shipping Corp. v. Kingdom of Greece*,[13] the Second Circuit retreated from its earlier stance in *Victory Transport* on the breadth of Federal Rule 4. The Ministry of Commerce of the Kingdom of Greece had entered a voyage charter for transportation of surplus wheat. The court in another opinion by Judge Smith again found consent to jurisdiction in an arbitration clause of the charter sufficient to validate the exercise of personal jurisdiction over the sovereign. But Judge Smith noted that Rule 4(d)(3) was not a "catch-all"[14] and concluded that Federal Rule 4 did not provide a *means* of service on foreign sovereigns. The newfound limitation on Rule 4 did not deter the court, however, from asserting jurisdiction over the Kingdom of Greece. Citing the Supreme Court decision in *Story v. Livingston*,[15] the court reasoned that the ad hoc provisions

10. *Id.* at 185.

11. 336 F.2d 354 (2d Cir. 1964).

12. The provisions of Federal Rule 4(d)(7) permit service upon "a defendant of any class" referred to in Rule 4(d)(3) "in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the district court is held. . . ." Accordingly, the state long-arm statute may be utilized to reach defendants enumerated in Rule 4(d)(3). Without noting which of the enumerated defendants in Rule 4(d)(3) were sufficiently analogous to a foreign sovereign, Judge Smith merely concluded that the Rule "seem[ed] broad enough to cover the Comisaria General." 336 F.2d at 364.

13. 360 F.2d 103 (2d Cir. 1966).

14. *Id.* at 107.

15. 38 U.S. (13 Pet.) 359 (1839). Dictum in *Story* permitted the district courts to modify the Equity Rules to the extent that changes were not inconsistent with the Supreme Court's statement of regulation of equity practice. For criticism of the Second Circuit's reliance on the *Story* opinion, see Note, *Sovereign Immunity*, 8 HARV. INT'L L.J. 182, 189 (1967).

of Rule 83 enabled the district court to fashion its own rule for service of process. Rule 83 enables the district courts to frame their own rules governing practice in any manner not inconsistent with the Federal Rules.[16] Accordingly, the Second Circuit, noting the absence of a federal rule or local rule in point, fashioned its own rule for method of service: where neither federal rules nor state law provide a means of service on foreign states and the foreign state has consented to the jurisdiction of the court, service of process is properly effected by ordinary mail to the sovereign's representative who negotiated the arbitration clause. Note that although the Second Circuit changed its position with respect to method of service of process on foreign sovereigns, the amenability theory of consent in *Petrol Shipping* followed the decision in *Victory Transport*.

No case had yet predicated amenability on the alternative theory of presence of the sovereign in the jurisdiction when consent was absent. In fact, the Seventh Circuit in *Purdy Co. v. Argentina*[17] had explicitly rejected the exercise of personal jurisdiction based on lack of minimum contacts. Service was attempted on the foreign state's Chicago consul, who by the terms of a contract between an American corporation and an Argentine corporation was authorized to authenticate corporate documents. The court held that the consul's authentication of documents was not a transaction of business in Illinois sufficient to subject him to in personam jurisdiction through incorporation of the state long-arm statute in Federal Rule 4(d)(7).

Similarly, in the case of *Oster v. Dominion of Canada*[18] the District Court for the Northern District of New York maintained that "presence" of the defendant foreign state was essential to invocation of jurisdiction, but it denied the exercise of personal jurisdiction when service was attempted by delivery of summons on the foreign state's consul general in New York City. The tortious acts of the foreign state in raising the water level in Lake Ontario resulting in property loss to American property owners apparently did not provide the necessary contacts to establish presence in the jurisdiction.[19] Thus, the two initial attempts in *Purdy* and *Oster* to

16. Federal Rule of Civil Procedure 83 provides:
Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. . . . In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

17. 333 F.2d 95 (7th Cir. 1964).

18. 144 F. Supp. 746 (N.D.N.Y. 1956).

19. It is also important to note that the court denied the existence of any authority for service of process outside the methods expressed in the Federal Rules. *Id.* at 748. *See also* Clark County, Nevada v. City of Los Angeles, 92 F. Supp. 28 (D. Nev. 1950) (absence of a specific authorization for manner of service rendered service defective). Thus, from *Oster* and *Clark County* it would appear that there is some support for the argument that the Second

predicate in personam jurisdiction on the existence of contacts between the defendant foreign sovereign and the forum failed for lack of the requisite "presence" relationship.

Although *Victory Transport* and *Petrol Shipping* lent support for the proposition that federal in personam jurisdiction could be exercised where consent was present, there was no authority for assertion of jurisdiction solely on the basis of the foreign sovereign's presence. The ground was broken by the District Court for the District of Columbia in the case of *Renchard v. Humphreys & Harding, Inc.*[20] Plaintiff, the U.S. Ambassador to Burundi, suffered damage to his District of Columbia residence during construction of the new Brazilian Chancery. The defendant foreign state objected to service of process and denied consent to the jurisdiction of the district court. Following the rationale of the Second Circuit in *Petrol Shipping* that the Federal Rules' failure to deal with foreign states was a *casus omissus* in the law,[21] Judge Flannery sanctioned the use of ad hoc practice to reach the foreign sovereign by registered mail at its Embassy. Although Judge Flannery failed to express his rationale for extension of amenability, the *Renchard* case must turn on a federal notion for presence since the foreign sovereign did not consent to suit. If this is the case, some federal courts have come full circle and recognized the use of both concepts, presence and consent, for obtaining personal jurisdiction over foreign states. It is then necessary to direct attention to the type of standard governing the utilization of either concept.

CHOICE OF STANDARD

The next relevant line of inquiry is whether a state standard or a federal standard of amenability should be utilized to test the validity of service of process. If the Federal Rules of Civil Procedure were to dictate the reach of federal process for foreign sovereigns, then clearly federal standards would govern amenability.[22] But the present Rules do not appear to deal

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Circuit's use of ad hoc practice for method of service constitutes judicial legislation and an abuse of the court's role.

20. 59 F.R.D. 530 (1973).

21. Petrol Shipping Corp. v. Kingdom of Greece, 360 F.2d 103, 109 (2d Cir. 1966).

22. The Second Circuit, the progenitor of the state law amenability rule, concedes the propriety of federal law application in the event a federal statute is in point. The decision in *Arrowsmith v. United Press International*, 320 F.2d 219 (2d Cir. 1963), turns on the court's finding that no "federal statute or Rule of Civil Procedure speaks to the issue [of amenability] either expressly or by fair implication." *Id.* at 225. If Congress chose to deal expressly with the problem of amenability through the Federal Rules, the Second Circuit would apparently have no objection to the application of federal standards even where there was an existing state statute dealing with amenability.

> [W]e fully concede that the constitutional doctrine announced in Erie R.R. v. Tompkins . . . would not prevent Congress or its rulemaking delegate from authorizing a district court to assume jurisdiction over a foreign corporation in an

expressly with foreign sovereigns. Whether a federal court is obliged to follow state standards of amenability in the absence of an applicable federal statute or is free to create its own federal standard of amenability is a perplexing question to be examined in light of issues of federalism and due process. In the case of foreign states, issues of comity and international law must also be considered.[23]

Much commentary and case law has been focused on the scope of Federal Rule 4 as a potential criterion of amenability.[24] The decision in *Arrowsmith v. United Press International,*[25] followed by *Petrol Shipping* and *Coleman v. American Export Isbrandtsen Lines, Inc.,*[26] indicates that (at least as far as the Second Circuit is concerned) Federal Rule 4 does not create a federal standard of amenability. In the *Arrowsmith* case plaintiff Arrowsmith brought a diversity suit for libel against United Press International in the federal district court in Vermont. Judge Friendly, writing for the majority, concluded that Vermont state law controlled the amenability of a foreign corporation to suit in the federal court. After an exhaustive review of the federal decisions concerning jurisdiction, the court determined that there was no basis for applying a federal standard of amenability: neither Federal Rule 4 nor the venue statutes provided a federal rule of application. The *Petrol Shipping* opinion confirmed Judge Friendly's judgment on the breadth of Federal Rule 4 by noting the dichotomy between manner of service and amenability and reiterating the restriction on the scope of Rule 4 to manner of service:

> [W]e do not equate 'presence,' or amenability to suit, with service of process, as our treatment of these two questions indicates, and we regard Rule 4 as speaking to service alone and not both service and amenability.[27]

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ordinary diversity case although the state court would not; and we reaffirm decisions of this Court that have sustained the application of certain Federal Rules of Civil Procedure differing from the rules applied by the state where the court sits.

Id. at 226.

23. *See* 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1075, at 302 (1969).

24. Fraley v. Chesapeake and Ohio Ry. Co., 397 F.2d 1 (3d Cir. 1968) (federal law held applicable where complaint asserts a federal right); Arrowsmith v. United Press International, 320 F.2d 219 (2d Cir. 1963) (amenability of foreign corporation held governed by state law). *See generally* 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1075 (1969).

25. 320 F.2d 219 (2d Cir. 1963).

26. 405 F.2d 250 (2d Cir. 1968).

27. 360 F.2d at 109. It would appear that the Second Circuit's position in *Victory Transport* is not entirely consistent with *Arrowsmith* since the former case holds that Rule 4 does dictate the reach of process (amenability) for foreign states. On the other hand, the court's finding of consent in *Victory Transport* may be the determinative ground of amenability.

Federal law, then, controlled manner of service of process but not amenability to suit for foreign sovereigns.

The *Coleman* case reiterated and confirmed the Second Circuit position that Rule 4 "does not say when the person served is subject to the jurisdiction of the court that served him."[28] *Petrol Shipping* skillfully avoided the application of state standards of amenability to foreign sovereigns by finding consent to jurisdiction of the court. In any event, the anomalous position of applying federal standards to the manner of service and state standards for amenability remains in the Second Circuit. What stance the court would adhere to in the absence of consent is uncertain.

The possibility of contradictory results is a very real one in a jurisdiction adhering to such distinctions. For instance, New York State standards of amenability may specifically preclude litigation against a foreign sovereign defendant while federal standards of method of service may at the same time provide for service of process. On the other hand, state law may render foreign states amenable to suit while federal law fails to deal with service. Thus, the question of whether a plaintiff can reach the foreign state defendant may turn on his choice of forum. The *Renchard* case, which apparently utilized a federal standard of presence, does not settle the question since state standards of amenability were not available to the District Court for the District of Columbia.

A further source of federal criteria for amenability of foreign sovereigns has yet to be explored. Federal Rule 4(e), which permits extraterritorial service upon parties not found within the state when authorized by state or federal law, is not limited to the specific classes of parties enumerated in Federal Rule 4(d)(3) or 4(d)(7). Arguably, Rule 4(e) extends the reach of federal process to foreign sovereigns when authorized by state or federal law. Although there "is little authority for serving a party not enumerated in Rule 4(d) under Rule 4(e),"[29] the *Victory Transport* decision suggests that such an approach might be available. On the other hand, the existence of multifarious difficulties in extraterritorial service on foreign sovereigns beyond Federal Rule 4(i)[30] indicates that Congress probably did not contemplate service on foreign states within Rule 4(e).[31]

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28. 405 F.2d at 253.

29. Miller, *Service of Process on State, Local, and Foreign Governments under Rule 4, Federal Rules of Civil Procedure—Some Unfinished Business for the Rulemakers*, 46 F.R.D. 101, 133 (1969). Foreign states are not among the parties enumerated in Rule 4(d).

30. Federal Rule 4(i) provides alternate methods of service on those parties covered by Rule 4(e) when the party is to be served in a foreign country. FED. R. CIV. P. 4(i).

31. Miller, *supra* note 29, at 134. Judge Flannery's comments on the difficulty of applying Rules 4(e) and 4(i) to foreign sovereigns in the *Renchard* case demonstrate the problem:

> [T]he difficulty in applying Rules 4(e) and 4(i) to the present case strengthens the conclusion that Rule 4 was not intended to apply to service on a foreign government. In order to uphold service under Rules 4(e) and 4(i), the court would

Assuming that the Federal Rules of Civil Procedure do not provide criteria for application of federal amenability standards, what other considerations might guide the decision maker in choice of federal or state law governing reach of process? First, as a practical matter, where service is effected in a federal manner pursuant to federal statute, amenability should be judged by federal standards.[32] The mixture of state and federal standards to govern amenability and manner of service respectively according to the *Petrol Shipping* rule would appear to lend much uncertainty to the exercise of personal jurisdiction over foreign sovereigns by federal courts. A litigant with a meritorious cause of action against a foreign state would search for the jurisdiction (among those of which he has a choice) with the most far reaching amenability rules and whose courts are most receptive to an interpretation of those laws as including foreign sovereigns. Whether that jurisdiction has adopted the *Petrol Shipping* ad hoc practice for manner of service is a further problem compounding the litigant's troubles. Practically speaking, one set of standards controlling both amenability and service would lessen the confusion.

Second, the very nature of a suit against a foreign sovereign lends much support to the use of a federal amenability standard. In other areas of international law, the courts have recognized the intrinsically federal nature of cases which involve the ordering of relationships with foreign states. Faced with the problem of applying state or federal standards to the scope of the act of state doctine, the Supreme Court in *Banco Nacional de Cuba v. Sabbatino* decided "to make it clear that an issue concerned with a basic choice regarding the competence and function of the Judiciary and the National Executive in ordering our relationships with other members of the international community must be treated exclusively as an aspect of federal law."[33] The same analysis is relevant to the choice of federal or state standards in the amenability question. Whether a foreign state can be brought into a federal court to defend against the claims of a U.S. citizen ought to be characterized as a federal issue regarding the ordering of international relationships.

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have to decide whether the embassy territory, although located physically within the District of Columbia, is nevertheless not "found within" the District for the purpose of Rule 4 because personal service cannot be effected within the embassy. . . . Furthermore, since Rules 4(e) and 4(i) refer to the personal jurisdiction statutes of the state, the court would have to decide whether the Government of Brazil is a "person" within the meaning of D.C. Code. . . . The very existence of these difficult and esoteric questions suggests that Rule 4 was not intended to provide a means of service upon a foreign government.

59 F.R.D. at 531.

32. Foster, *Judicial Economy*, *supra* note 7, at 98.

33. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964).

THE FEDERAL STANDARDS

Amenability to suit in the federal courts has been premised on two grounds: consent to the jurisdiction of the court and presence of the defendant within the forum's jurisdictional bounds. In the case of foreign sovereigns, distinctions have been maintained under both grounds solely because of the defendant's identity. At one time consent to suit by the foreign sovereign was necessary to invocation of jurisdiction apart from presence and the sovereign immunity doctrine. The traditional rule adhered to by the federal courts was announced in the case of *Kingdom of Roumania v. Guaranty Trust Co.*:

> It is the long-accepted law that a foreign sovereign cannot be sued nor his property attached in the courts of a foreign friendly country without his consent.[34]

The Second Circuit cases, *Victory Transport* and *Petrol Shipping*, appear to indicate continued observance of the traditional rule. Both cases depended on the imputation of consent to suit in the courts of New York by the foreign state through a contractual arbitration clause and the Federal Arbitration Act.[35] In the event these cases had presented a nonarbitrable suit, one in which implied consent was nonexistent, the law before *Renchard* would have precluded amenability of the sovereign. While the same court in other contexts might have uncovered other grounds for an implication of consent, the Second Circuit showed decided reluctance to exercise jurisdiction over the foreign state absent statutory authorization.[36] Absent actual consent of the foreign sovereign, several courts have denied exercise of personal jurisdiction.[37] At least one commentator has noted that

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34. 250 F. 341, 343 (1918). The requirement of actual consent was also manifest in *Hellenic Lines, Ltd. v. Moore*, 345 F.2d 978 (D.C. Cir. 1965) (plaintiff sought to compel a U.S. marshall to serve summons on the Tunisian ambassador):

> The Greek libelant at no time has made any sort of showing that the Ambassador has consented . . . to accept service of process on behalf of the government which he represents for diplomatic purposes in this country.

Id. at 981-82.

35. The arbitration clause in *Petrol Shipping* read as follows:

> Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

360 F.2d 103, 105 (2d Cir. 1966).

The arbitration agreement in *Victory Transport* was identical to that concluded in *Petrol Shipping*.

36. *See* Lowenfeld, *supra* note 2, at 925.

37. Oster v. Dominion of Canada, 144 F. Supp. 746 (N.D.N.Y. 1956). *See also* Hellenic

consent produces a reasonable result only when the consent is actual and based on the defendant's "realistic appraisal of the consequences."[38] In other fields for different classes of parties, the consent theory has progressed from strict compliance with the traditional rule of actual consent to a fictionalized version. For example, in *National Equipment Rental, Ltd. v. Szukhent*[39] defendant lessees of farm equipment in Michigan were required by the terms of a lease to designate an agent in New York for the purpose of accepting service of process. The U.S. Supreme Court held that defendants had consented to suit. The development of the consent theory from actual consent to implied consent based on acceptance of a "take-it-or-leave-it" lease agreement as in *Szukhent* evinces an intention to widen the breadth of personal jurisdiction.

Theoretically, the undertaking of any activity within the boundaries of the United States apart from the normal routine of diplomatic exchange is an implied consent to submit to the jurisdiction of U.S. courts in the event the foreign state is sued. The foreign consul can be viewed as the agent of the foreign sovereign within the United States for purposes of service of process.[40] There appears to be no reason apart from adherence to the traditional rule why such a liberal rule should not be extended to jurisdiction over foreign states since, in the Second Circuit's own terms, there is "no reason to treat a commercial branch of a foreign sovereign differently from a foreign corporation."[41] Foreign corporations are, of course, subject to the jurisdiction of the courts under the implied consent theory. Further, the *Victory Transport* and *Petrol Shipping* decisions indicate a trend toward development of a federal standard in the consent context for foreign states. Neither decision precludes the application of implied consent rules to foreign sovereigns. Thus, the application of a liberal federal standard based on implied consent appears to be in order for those cases when presence of the foreign state is absent.[42]

Lines, Ltd. v. Moore, 345 F.2d 978, 981 (D.C. Cir. 1965).

38. Foster, *Judicial Economy, supra* note 7, at 81 n.19.

39. 375 U.S. 311 (1964).

40. In *Renchard*, Judge Flannery decided that the service of process by registered mail upon the embassy would not violate the ambassador's diplomatic immunity:

> The purposes of diplomatic immunity are not violated by registered mail service upon the embassy. Unlike the situation where a federal marshall attempts service upon an ambassador personally, the delivery of a letter to the embassy does not affront the ambassador's personal dignity. . . . Although receipt of registered mail service may cause the ambassador to divert some time from his diplomatic functions, this objection is unrealistic in the modern world of diplomatic relations.

59 F.R.D. at 532.

41. Victory Transport Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d at 363.

42. *See* 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1111, at 456 (1969):

The second federal basis of amenability to service of process is the presence of the defendant within the forum's jurisdictional bounds. In the absence of consent, the question of amenability rests on whether the presence of agents or the performance of activities by the foreign state within the territory is a sufficient basis for in personam jurisdiction.[43] What activities of the defendant represent a sufficient basis for invocation of personal jurisdiction has been largely settled by the Supreme Court's decision in *International Shoe Co. v. Washington.*[44] When the defendant's conduct in the jurisdiction evokes certain "minimum contacts" such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice,"[45] his presence by virtue of those activities renders him amenable to suit. However, only two cases—*Purdy* and *Renchard*— have dealt with the due process formulation of minimum contacts in the foreign sovereign context.

In *Purdy*[46] plaintiff, a domestic corporation, brought suit against defendants Argentina and Direccion General De Fabricaciones Militares (an Argentine corporation purported to be a department of that country's government). The Seventh Circuit held that the functions performed by the Argentine consul in authenticating contractual documents were not sufficient to render the consul an agent of the foreign state for purposes of service of process. Further, the activities of the DGFM within the jurisdiction (establishment of a letter of credit with an Illinois bank) did not supply the minimum contacts of transaction of business in Illinois requisite to invocation of personal jurisdiction.

Despite the failure to find the necessary contacts in *Purdy*, at least one court has predicated amenability on the federal presence standard. In *Renchard*, although Judge Flannery declined to make a determination of the foreign sovereign's presence in the District of Columbia for purposes of Federal Rule 4, the tortious act and presence on U.S. soil of the defendant foreign state's representative provided the necessary minimum contacts with the jurisdiction. This federal standard of amenability for foreign sovereigns based on presence, which *Renchard* suggests, should not be restricted to requiring that the minimum contacts occur within a particular forum's jurisdiction. A pervasive federal standard involving the defendant's contacts with the federal system as opposed to contacts with the

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> [T]he court's decision that service within the state may be made under a local rule or ad hoc practice suggests that a federal court may create a federal standard in the consent context to determine whether service of process on a foreign government is adequate . . . .

43. Pugh & McLaughlin, *Jurisdictional Immunities of Foreign States*, 41 N.Y.U.L. REV. 25, 29 (1966).

44. 326 U.S. 310 (1945).

45. *Id.* at 316.

46. 333 F.2d 95 (7th Cir. 1964); *see* text at note 17 *supra*.

particular jurisdiction would appear to be a very appealing basis for jurisdiction over foreign sovereigns. Where the nature of the defendant is one which touches even remotely the foreign relations of the United States, the due process limitation on amenability should be measured by the fifth amendment.[47] Accordingly, adoption of the fifth amendment to test the limits of minimum contacts application would enable any U.S. district court, whatever its location, to issue process on the foreign state so long as the defendant still maintained sufficient contacts with the federal government.[48] Such a result clearly is compatible with the federal character of relations with foreign states. In any event the *Renchard* opinion has created the framework for application of the presence standard to amenability of foreign sovereigns.

PROPOSED SOLUTIONS TO AMENABILITY PROBLEMS

The present uncertainty surrounding in personam jurisdiction over foreign sovereigns is a result of the divergent application of amenability standards and methods of service of process.[49] The use of ad hoc practice pursuant to Federal Rule 83 to reach foreign states has been approved by the District Court for the District of Columbia and the Second Circuit but has not found support in the other circuits. With respect to amenability to suit the District Court for the District of Columbia would advocate reach of federal process to the extent of the fifth amendment; on the other hand, the Second Circuit stance appears to require consent to the jurisdiction of the court. Hence the present gap in the Federal Rules for amenability has opened the way for judicial legislation in the form of ad hoc practice.[50] However, a sovereign found subject to court-ordered service of process under the Second Circuit criteria might not be brought into court in the Seventh Circuit. The situation leaves both claimants and defendant sovereigns unsure of their position in the federal courts.

Perhaps the most obvious solution would be a federal statute prescribing amenability and manner of service procedures for foreign states. Indeed, the courts have not been unmindful of what appears to be legislative tardiness in this area. Judge Smith in *Petrol Shipping* noted that "legislators and rulemakers have failed to catch up in their procedural provisions with the more substantive developments in this field of law."[51] Certainly, the

47. Foster, *Judicial Economy, supra* note 7, at 97 n.76. *See generally* Green, *Federal Jurisdiction In Personam of Corporations and Due Process*, 14 VAND. L. REV. 967 (1961).

48. *See* Note, *A Proper Basis for Amenability to Process in Federal Diversity Cases*, 42 MISS. L.J. 375, 392 (1971).

49. *See* discussion in text, *supra*, surrounding the application of amenability rules in *Petrol Shipping*, *Purdy Co.*, *Victory Transport*, and *Renchard*.

50. *See* note 19 *supra*.

51. 360 F.2d at 109.

anamolous position in the Second Circuit of applying state amenability standards and federal manner of service of standards appears in need of change. But the country's changing attitude toward sovereign immunity[52] has not been pursued by the legislature in the more critical area of obtaining jurisdiction at the outset.[53] One proposed statutory solution to the amenability question would emphasize the question: "[D]oes a given transaction—contractual or delictual—have sufficient relation to a physical location to allow a claim arising out of that transaction to be triable in that location."[54] Adoption of such a statute would, in effect, enact the federal common law standard of minimum contacts. If the fifth amendment due process constraints are applicable, then this formulation would provide a forum for any U.S. citizen with a claim arising in tort or contract in any federal court, since the foreign state has minimum contacts with

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52. The State Department has proposed a sovereign immunity statute which deals specifically with the problem of manner of service:

> Service in the district courts shall be made upon a foreign state or a political subdivision of a foreign state and may be made upon an agency or instrumentality of such a state or subdivision which agency or instrumentality is not a citizen of the United States as defined in Section 1332(c) and (d) of this title by delivering a copy of the summons and complaint by registered or certified mail, to be addressed and dispatched by the clerk of the court, to the ambassador or chief of mission of the foreign state accredited to the Government of the United States, to the ambassador or chief of mission of another state then acting as protecting power for such foreign state, or in the case of service upon an agency or instrumentality of a foreign state or political subdivision to such other officer or agent as is authorized under the law of the foreign state or of the United States to receive service of process in the particular case, and, in each case, by also sending two copies of the summons and of the complaint by registered or certified mail to the Secretary of State at Washington, District of Columbia, who in turn shall transmit one of these copies by a diplomatic note to the department of the government of the foreign state charged with the conduct of the foreign relations of that state.

Proposed Section 1608 to Title 28, Chapter 97, *reprinted in* 12 INT'L LEGAL MATERIALS 118, 127 (1973).

Further, the proposed amendment to 28 U.S.C. § 1391 by addition of subsection (f) would permit civil actions to be brought in the district court where:

> a substantial part of the events or omissions giving rise to the claim occurred, or . . . a substantial part of the property that is the subject of the action is situated, or . . . the agency or instrumentality is licensed to do business or is doing business . . . or in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision . . . .

Id. at 131.

In effect, the proposed statute would provide a federal long-arm enabling the federal court to assert jurisdiction under the express presence standards.

53. *See* 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1111, at 448 (1969).

54. Comment, *Sovereign Immunity Made Easy: Curbing Litigation with Advisory Opinions*, 3 CALIF. W. INT'L L.J. 354, 362 (1973). The State Department's proposed statutory solution would appear to reach even further than the cited proposal by enacting a broad presence standard of amenability.

the federal sovereignty. Thus, a pervasive federal standard in the presence context limited only by fifth amendment due process considerations would create some degree of uniformity in this uncertain field of in personam jurisdiction.

Certainly there is no constitutional restraint on Congress to enact such legislation. The in personam reach of the federal courts is a matter of congressional discretion.[55] On the other hand, specific legislation dealing with service of process on foreign governments may be considered unwise. If amenability and manner of service can be handled within the confines of Federal Rule 4, there seems to be no reason for making a statutory exception for foreign states.[56] The problem, of course, comes in the divergent use of ad hoc practice to reach the foreign state when the court finds that it is not within the meaning of Federal Rule 4. The practice may be acceptable in the Second Circuit but not elsewhere. Claimants will be encouraged to go forum shopping for those courts providing the most liberal amenability standard. Quite obviously the *Renchard* decision has paved the way for litigants in the D.C. Circuit when only the presence criterion is available. In any event the question of amenability and manner of service standards for foreign sovereigns seems ripe for adjudication by the Supreme Court in the absence of an intervening legislative solution.

L. NEAL ELLIS

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55. Foster, *Judicial Economy*, *supra* note 7, at 80.

56. *See* 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1111, at 459 n.74 (1969).

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

LIMITED OFFICIAL USE

April 30, 1974

MEMORANDUM FOR PETER M. FLANIGAN

FROM: CHARLES A. COOPER

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

MAY 14 1974

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