

**STATEMENT OF MICHAEL WARIS, JR., BAKER, McKENZIE & HIGHTOWER, WASHINGTON, D.C.; ACCOMPANIED BY PETER L. BRIGER.**

Mr. WARIS. Mr. Chairman and members of the committee, my name is Michael Waris, Jr., and appearing with me today is Peter L. Briger. We are both of the law firm of Baker, McKenzie & Hightower and are appearing on its behalf.

We have previously filed with the committee a more formal statement which I believe you have before you. We would like that made a part of the record.

Mr. KARSTEN. Without objection it will be made a part of the record.

(The statement referred to follows:)

STATEMENT SUBMITTED BY IRA T. WENDER, MICHAEL WARIS, JR., AND PETER L. BRIGER, OF BAKER, McKENZIE & HIGHTOWER, RELATING TO H.R. 5916

#### I. INTRODUCTION

A. H.R. 5916 is designed to stimulate foreign investment in this country as a means of improving our balance of payments. (In this regard we find the legislation beneficial for the country and practicable.)

B. Secondly, H.R. 5916 is designed to make the taxation of foreigners more uniform and consistent.

C. In this connection, it contains a proposed amendment which would—

- (1) Eliminate the intercorporate dividends received deduction in the case of all resident foreign corporations; and
- (2) Exempt such corporations on capital gains realized on U.S. stock investments.

#### II. DISCUSSION

A. The purposes of the proposed amendment are as follows:

1. To eliminate the intercorporate dividends received credit for resident foreign corporations that are essentially passive holding or investment companies; and

2. To segregate business income from investment income.

B. The proposed amendment goes beyond its stated purposes:

1. Because of its generalized applicability, the proposed amendment would deny the intercorporate dividends received deduction to foreign corporations engaged in active, substantial business in the United States; and

2. Dividend income received by foreign corporations from affiliated domestic subsidiaries is, in essence, business income.

B. The result of such a broad legislative approach would be an unwarranted disruption and elimination of a traditional and legitimate means which foreign corporations have used to conduct business in the United States.

C. The effect of the proposed amendment might also be to discourage existing and potential long-term investment in this country by foreign corporations.

#### III. RECOMMENDATIONS

Foreign corporations that are actively engaged in business in the United States and that have made substantial, permanent type investments in domestic corporations (at least a 10-percent-equity interest) should be permitted to elect either:

- (1) The treatment provided under existing law for resident foreign corporations (the availability of the intercorporate dividends received deduction, but a tax on capital gains realized in connection with U.S. stock investments); or

- (2) The tax treatment provided in the proposed amendment (no intercorporate dividends received deduction, but exemption from tax on capital gains on U.S. stock investments).