

An obvious administrative problem involves a combination of two points already discussed. Where a U.S. direct investor holds a minority interest, he may find it impossible to comply with the repatriation requirement either because of foreign law or the intransigence of a foreign board of directors. In either case, it will be necessary for him to obtain a specific exemption from the literal application of the regulations which adds in turn to the case-by-case administrative burden already noted.

E. Despite the fact that we have been encountering balance-of-payments difficulties for some years, the Treasury Department has not been as flexible as it might be in making tax changes with regard to Section 482 and other aspects of the Code to encourage repatriation of foreign earnings on a purely voluntary basis.

Under the controls now in effect there will undoubtedly be some unfavorable tax impact on U.S. companies triggered by the repatriation requirements. This is discussed in more detail elsewhere in this statement. Suffice it to say that in some situations where, for example, manufacturing income abroad is involved and the repatriation is not voluntary but forced under the regulation, there will be tax consequences in the United States. There is no provision in the control program for relief from these effects. This problem is doubly serious from the standpoint of public policy because the program was instituted by government on the basis of alleged legal authority grounded in an ancient statute and without consultation or approval by the Congress in which is vested the taxing authority. Finally, as indicated elsewhere in this statement, the Administration has apparently dropped its tentative plan to offer tax inducements to repatriate accumulated earnings.

Affirmative Recommendations

We turn now to an identification and discussion of certain affirmative recommendations which we believe should be considered, first as an alternative to the controls programs that have been instituted or proposed, or as accompanying steps in the event the investment controls remain in effect for at least a limited period of time and the proposed tourist restrictions are legislated. We recognize, of course, that Congress may choose to permit the foreign direct investment program to continue solely as an Executive Branch effort, although it may see the need for legislation in some areas such as those aspects of the program involving taxation. We will deal first with the nontax aspects.

1. *A prompt return to a voluntary system affecting direct investment abroad.*—Although we have certain misgivings about even a voluntary system of restrictions on foreign investment, it is clearly preferable to mandatory controls. It preserves maximum flexibility for decisions to be made in the market place and for management to consider various approaches to meet established goals. It avoids the very costly machinery of control from the government viewpoint and it relieves business of the tortured process of formal compliance, government conferences, tedious paper work, exacerbation of relationships with partners abroad, etc. By preserving an important degree of flexibility, it will make business better able to avoid some of the perverse effects of the mandatory program—as, for example, a reduction of exports and a disruption of total world trade planning—which will inevitably flow even in the short run from a rigid system of controls. Both from the government and private viewpoint, it will facilitate the avoidance of gross inequities arising either from the fabric of the control system or from the varying circumstances attendant on individual company positions.

As already acknowledged by government, a voluntary program can accomplish a substantial adjustment in the balance-of-payments situation at an acceptable cost in the terms of both national policy and private impact. In sum, when all of the adverse factors of mandatory direct foreign investment controls, as outlined herein, are taken into consideration, it is our firm belief that the net performance of the voluntary system will be at least as productive as that which can be achieved under mandatory controls. We recommend, therefore that the spectacular move which the Administration felt obliged to take on January 1 should be reversed at the earliest possible date.

2. *Foreign investment and domestic fiscal policy.*—Up to a point we agree with the Administration's position concerning the fiscal situation in the United States. We accept the proposition that perhaps the most serious aspect of our balance-of-payments problem is to be found in domestic policy. Continuing budgetary deficits—huge deficits—which inflate the economy and thus raise the costs of exporting companies are a grave threat to our international competitive position. We do