

"When the 'Voluntary Program' was initiated in 1965, the United States Government acknowledged that over the longer term United States investments abroad created substantial net receipts—that inflows from incremental exports, interest and dividends, royalties and fees more than offset the dollar outflow from initial and continuing investments. The Convention holds that these more significant long-term benefits should no longer be penalized and recommends the termination of the 'Voluntary Program' without further restrictive controls."

Recognizing the emergency impact of recent international financial developments which gave rise to the President's balance of payments program announced January 1, 1968, and the immediate need to correct the recurring deficits in the U.S. balance of payments position, it continues to be our firm opinion that the significant long-term benefits of expanding trade and investment should not be penalized by any undue prolongation of temporary programs.

The purpose of this letter is to immediately place before you our concern with certain aspects of the regulations relating to foreign direct investment which were published in the Federal Register on January 3, 1968. We shall continue to study these regulations within the Council and our appropriate Committees.

The points and areas of immediate concern to American business resulting from our initial analysis of the regulations are summarized as follows:

1. REPAYMENT OF OUTSTANDING LOANS AND FUTURE BORROWING ABROAD

Many companies, particularly in their efforts to cooperate under the "Voluntary Program" since 1965, have had their foreign affiliates raise their capital requirements through borrowing abroad. Many of these arrangements have provided that such borrowings would be repaid out of the foreign affiliate's revenues. Many foreign affiliates will be placed in difficult cash positions when they are mandated to repatriate earnings and also obliged to repay borrowings expended for capital requirements.

This pressure on the cash position of foreign affiliates will be intensified in those instances in which repatriation of earnings, as urged under the "Voluntary Program", was at high levels during 1965 and 1966, and will be accentuated where companies in order to comply with the "Voluntary Program" guidelines on repatriation borrowed for that purpose. Under Section 1000.202 a corporation is required to remit at the same percentage as it remitted under the "Voluntary Program" when that percentage is higher than the prescribed percentage under the mandatory program, whereas a company that did not remit under the "Voluntary Program" is limited to the percentage prescribed under the mandatory program.

The effect of these provisions, together with the moratorium on new capital inflow into Schedule C countries, will be to force foreign affiliates into further borrowing. Their capacity to borrow, however, will be seriously impaired by Section 1000.312(e) (1) and (2) of the regulations which provides that any satisfaction of an obligation of a direct investor incurred as a result of a guarantee of an obligation of an affiliated foreign national, or the assumption of a liability of an affiliate for a national, is deemed to constitute a transfer of capital. Such transfers are prohibited to Schedule C countries and are otherwise limited for countries in Schedules A and B. Thus, since a U.S. parent would no longer be able to guarantee the loans of its affiliated foreign nationals in continental Europe, these affiliates will be forced to obtain their short and medium capital requirements in the increasingly expensive long-term money markets. This will diminish future earnings available for repatriation to the United States.

These provisions reduce both the capacity of foreign affiliates to repay loans and to secure further borrowings, thus weakening their competitive position and closing the door for required capital to meet their normal growth needs. Accordingly, consideration should be given to permitting the net long-term portion of borrowings expended in direct investment to be included in calculating the investment base. In addition, an amendment of the regulations is urgently required to permit U.S. parent companies to perform under their guarantees of the loans of foreign affiliates and to offer guarantees of the loans of foreign affiliates that would be acceptable to foreign lenders. We welcome indications that clarification on this point may shortly be expected.