

to see what part of these they will be able to accept, but I think they are of general interest and may be helpful to the committee.

Mr. HERLONG. Without objection they will appear at this point in the record.

(The information referred to follows:)

INEQUITIES AND AMBIGUITIES IN THE DEPARTMENT OF COMMERCE REGULATIONS OF
DIRECT INVESTMENTS AND RECOMMENDED CORRECTIVE ACTIONS

I. REPATRIATION OF DIRECT INVESTMENT EARNINGS—SECTION 1,000,202

This regulation requires the annual repatriation by a direct investor of current earnings from affiliated foreign nationals. The amount to be repatriated is either the amount by which current earnings exceed authorized reinvestment or the average percentage at which funds were repatriated in 1964-66, whichever is the higher.

QUESTIONS POSED

A. At no place in the regulations are current earnings defined. The only definition of earnings in the regulations is the definition of reinvested earnings in Section 1000.313, which is "the earnings of an affiliated foreign national available at any time for distribution and not so distributed."

Under the circumstances it is not clear whether the requirement for repatriation applies to earnings calculated after (1) payment of losses incurred in prior years, (2) payment of preferred stock dividends, (3) repayment of loans or compliance with dividend restrictions in loan agreements, and (4) offset of losses of a second tier subsidiary against profits of a first tier subsidiary.

No consideration is given to the legal requirements in other countries concerning calculation of earnings or authorization of dividends. Some countries only authorize distribution of dividends based on the prior year's earnings.

No consideration is given to the possibility of devaluation of currencies between the time that earnings are calculated and repatriation is made.

B. The regulations require a company which, as a good citizen, exceeded the voluntary program target in 1964, 1965, and 1966 to repatriate at a higher level than a company which had been less cooperative. This is inequitable.

A mature company which had no capital outflows from the United States and repatriated earnings from its foreign affiliates at a high level during the base period will be required to repatriate at a very high level, particularly from Schedule C countries. This could be so high as to be akin to liquidation. (See Table I below.)

CORRECTIONS PROPOSED

A. Amend the regulations to define earnings from an affiliated foreign national as being after deduction of payment described in "Questions Posed" or in conformity with normal U.S. accounting practices in determining earnings available for distribution.

In no event should earnings be considered liable to repatriation if circumstances beyond the control of the direct investor makes them unavailable for repatriation. Under no circumstances should the mandatory repatriation requirement in any year be more than 100 percent of the earnings of foreign affiliates in any one country.

Provision should be made that repatriation will be in accordance with the rate of exchange at the time of repatriation in the event that there has been a devaluation of the currency in which earnings were reported between the time of calculation of earnings and the time of repatriation.

B. Amend the regulations to provide that repatriation under each schedule will meet the requirements if it amounts to a percentage ten percent greater than the average percentage repatriation in the base period.

Where a company can demonstrate that the base period is inequitable it should be given the option of calculating the base for repatriation on a period, for example 1961-1966, which would eliminate the inequity.