

QUESTIONS POSED

B. The press release concerning the regulations on foreign direct investment issued on January 2, 1968 states on page 4, "Funds made available by depreciation abroad are also not counted (against a direct investor's target—ed.) or required to be repatriated." Nothing is said in the regulations themselves specifically about depreciation or sinking funds. However, if a U.S. company had a wholly-owned affiliate abroad and that affiliate had funds, accruing under its depreciation account or from sinking funds, deposited in bank accounts or invested in short-term assets, Section 1000.203 might be interpreted as requiring repatriation of those balances to the extent that they exceed amounts held in 1965 and 1966. This arises from the fact that this section applies to liquid assets held by or for the account or for the benefit of a direct investor.

C. A number of American companies, in full compliance with the Voluntary Restraint Program, had, prior to December 31, 1967, legally committed themselves to programs requiring continued investment or had signed contracts so committing them. Still others had undertaken investment programs which can only be brought to fruition if further investments are made this year and in following years. Inability to fulfill these planned investment programs will mean that such companies must violate contracts, contravene the law, or lose the value of investments already made.

CORRECTIONS PROPOSED

B. Amend section 1000.203 in such a fashion that it will not be applicable to sinking funds or to funds arising from depreciation accounts.

C. The regulations should be amended so that where a direct investor is legally committed, contractually bound, or in the course of completion of a planned investment program, where inability to complete it would mean substantial and irrevocable loss of existing investment, he is exempted from the provisions of Section 1000.504 insofar as the completion of such investments is concerned.

III. TRANSFERS OF CAPITAL—SECTION 1000.504

This section fixes the extent to which direct investors may make new direct investments abroad. Direct investments are defined in Section 1000.306 as a transfer of capital or the share of a direct investor in reinvested earnings of an affiliated foreign national.

QUESTIONS POSED

A. The provisions of the regulations create a serious problem for a company which had no base in 1965 and 1966. A small company considering a medium-size investment in a less developed country may well be put off completely by the need for long drawn out negotiations with the Commerce Department to secure an exception. Since it is our national policy to encourage the development of less developed countries, this seems unwise. The \$100,000 worldwide exemption as applied to LDC's is not adequate.

CORRECTIONS PROPOSED

A. Amend Section 1000.503 by adding a new paragraph as follows: "During any year direct investment by any direct investor in Schedule A countries, not exceeding in the aggregate \$5 million, is hereby authorized."