

QUESTIONS POSED

B. The practice of direct investors in lending funds to affiliated foreign nationals differs. Some companies use open advances or loans with no stated maturities. Others provide loans under written loan agreements with fixed maturity dates. It is not clear whether an amendment to such a loan agreement extending the maturity date of the loan constitutes a new transfer of capital under the regulations. Should this be the case it would be discriminatory toward the company which follows a formal practice of loans.

CORRECTIONS PROPOSED

B. Either through interpretive statement or amendment to the regulations it should be made clear that extension of the maturity date of loans from a direct investor to an affiliated foreign national does not constitute a new transfer of capital so long as the amount is not increased.

IV. CURRENT TRANSACTIONS INVOLVING GOODS AND SERVICES

The Summary of the regulations on foreign direct investment, issued by the Commerce Department on January 2, 1968 states, "The regulations do not place limitations on: (1) current transactions involving goods or services." This matter is not treated directly in the Foreign Direct Investment Regulations which speak rather of direct investments comprising transfers of capital or reinvested earnings.

QUESTIONS POSED

A. Does this exclude from the regulations the following transactions of the direct investor:

1. Shipments of merchandise to affiliated companies on credit?
2. Reimbursement of the expenses of overseas research facilities?
3. Equipment exports to a foreign affiliate on extended terms or against medium-term, interest-bearing loans? (Section 1000.312(d) defines a net increase in loans or advances upon open account to an affiliated foreign national as a transfer of capital.)
4. Equipment exports to a foreign affiliate financed by an Ex-Im Bank loan to the U.S. parent?

(If transactions described in 3 and 4 are not excluded it would be inequitable because similar transactions with third parties abroad would be considered a desirable support of the drive to increase exports, e.g. B707 loans to Air France.)

5. Exports of goods, material or equipment in exchange for an equity interest?

6. Exchange of stock in a foreign affiliate for services, e.g. accrual of technical assistance royalties in local currency under specific arrangements to apply them as partial payment for a committed investment?

CORRECTIONS PROPOSED

A.1. By interpretive memorandum or amendment to the regulations exempt increases in a debt of a foreign affiliate to a direct investor as a result of the furnishing of services, payment of royalties or other current transactions where payment terms are less than 180 days.

A.2. By interpretive memorandum or amendment to the regulations exempt reimbursement of the expenses of overseas research facilities.

A.3. and 4. By interpretive memorandum or amendment to the regulations exempt from the regulations equipment exports by a direct investor to a foreign affiliate on extended term or medium-term loans or Ex-Im Bank loans to the direct investor.

A.5. and 6. Amend the regulations to provide an exception for a direct investor acquiring an interest in a foreign affiliate in exchange for the provision of equipment, material or services where it can be shown that the investment in question would not otherwise be made.

V. APPEALS

The Foreign Direct Investment Regulations give the Secretary of Commerce broad jurisdiction to determine distribution of income for purposes of repatriation, to exclude persons from the authorizations or exemptions or privileges conferred in the regulations, and to grant specific authorizations and exemptions from the regulations. No provision is made for formal hearings or appeals.