

QUESTIONS POSED

CORRECTIONS PROPOSED

A. The regulations provide the Secretary of Commerce with very broad powers to determine whether and to what extent a company may invest abroad. Should a company violate the regulations or orders issued by him under these regulations, it is liable to severe criminal penalties. In these circumstances the failure to provide formal hearings and appeals procedure within the Department and a procedure for appeals to the courts from Departmental decisions places interested companies at a serious disadvantage.

A. Amend the regulations to provide for formal hearings and appeals within the Department and the right to appeal Department decisions to the courts.

Mr. HERLONG. I would like your comment on the question that if your recommendations are adopted by the Department of Commerce will they, in your opinion, in any way diminish the balance-of-payments savings anticipated from the program?

Mr. DANIELIAN. No, we don't believe they will have any effect on the amount of recovery of dollars. I think that they will really simplify the administration of it.

For instance, there is no definition of earnings anywhere in the regulations. Do they mean by earnings after payment of losses incurred in prior years, carryover, carryback, payment of preferred stock dividends, or before or after repayment of loans or compliance with dividend restrictions in local countries.

There is just no definition, and a businessman is just not able to comply with regulations that are so indefinite. There is no consideration being given to legal requirements of other countries concerning calculation of earnings.

In many countries, for instance, there are dividend payments this year on earnings last year, and yet the regulations require you to comply on a current basis. How can you?

For instance, regulations discriminate against companies that faithfully complied during the voluntary period of 1965-66 and they repatriated a lot of their earnings. Now they are frozen into a limited straitjacket and it may in fact jeopardize their equity position. They may not be able to borrow money from even local sources because they are forced to repatriate an inordinate proportion of their earnings.

Any owner of 10 percent or more of stock is required, under penalty of \$10,000 fine and 10 years in jail, to repatriate earnings. How can they expect a company that only controls 10 percent of stock in a foreign subsidiary to be able to tell the company: "Please, give me some of my earnings. Otherwise I am going to jail."

So there are many, many aspects of these regulations that need to be clarified. The business community is very cooperative and so is the Department of Commerce and we are hoping that these problems will be cleared up.

Mr. HERLONG. Thank you very much. If there are no questions we appreciate your contribution and the great help you have been to the committee.

Mr. DANIELIAN. Thank you.

Mr. HERLONG. The next witness is Dr. Peter Kenen.

Dr. Kenen, for the purpose of the record would you please identify yourself and whom you represent and then proceed in your own way.