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EUROPEAN COMMISSION

DELEGATION/REPRESENTATION/OFFICE IN WASHINGTON D.C.

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COVER PAGE PLUS 8 PAGE(S)

TO: Avery DGI

FROM: Richard Wright

DATE: October 22, 1990

PLEASE COPY TO: Giola, Paemen, Abbott, Dugimont,Keck, Carl, Richardson J, Jouanjean, Pantelouris, Tirr, Arnault DGI
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: Boggio DGXII
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: Goergen, Power DGXV
: Kuijper SJ

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SUBJECT: Foreign Investment

Delegation (Pirzio-Biroli and Wright) presented the attached demarche and talking points to McAllister (Assistant Secretary for Economic and Business Affairs) and Carlisle(Office of Investment Affairs) at State on 19 October. We reiterated that all the objectionable Bills in Congress appeared to be moving one way or another away from the principle of National Treatment . While the US Administration had been helpful in opposing much of this draft legislation the Community remained concerned both about the proliferation of Bills and the continuing threat to foreign investors in the US. We also referred to the double standards inherent in the US approach, on the one hand , to extraterritoriality and, on the other, to the US desire to see the Community stick rigidly to Article 58 of the Treaty in its treatment of EC subsidiaries of US companies. Which way did the US firms want its subsidiaries in Europe to be treated ?

McAllister agreed with the EC position on foreign investment and referred to the " junk " that was appearing in many Congressional Bills. Pressed on when we might expect an Administration statement on investment policy he suggested that it might be done

between sessions of Congress but after the conclusion of the Round (assuming that this is in December). This statement should be comprehensible to the man in the street i.e. avoid terms (but not concepts) such as " national treatment " which meant nothing if you were not an expert in the trade field.

McAllister then went on to say that it was important to arrive at an agreement on a revised national treatment instrument in the OECD . Such an instrument, inter alia, would provide better ammunition for the Administration to argue on Capitol Hill that the Congress should not legislate in certain areas. He also suggested that the instrument could be appropriately renamed the " Competitive Equality Commitment " (for example)

Delegation (Wright) met today with Steve Canner, Director of the Office of International Investment in Treasury and Chairman of the Committee on Foreign Investment in the US which administers the Exon-Florio provisions. Again the demarche was received favourably . Canner pointed out that a number of the provisions alluded to in the text would not pass this year but would resurface in the next session of Congress. He appeared most concerned about the Walgren Bill in the House which will find an easy backer on the Senate side following the controversy over the sale of Semi-Gas to a Japanese company.

On the issue of restrictions on Political Action Committees for US subsidiaries of foreign companies Canner said that Treasury, State and Commerce opposed the Federal Election Commission's notice of proposed rule-making on the grounds that it is inconsistent with long-standing US policy of according national treatment to foreign - owned US companies. [Delegation notes that this view is identical to the one expressed in our demarche - see attached letter from Acting General Counsel Archibald to the FEC].

With respect to the provisions of H.R. 5021 (Appropriations Bill for various agencies) regarding access of foreign firms to DOC-funded R&D programmes Canner said that the Economic agencies (Treasury, USTR, Commerce) had opposed the Senate language and had pushed hard for maximum flexibility to be given to the Secretary of Commerce in selecting firms eligible for financial assistance.

[Delegation notes that the Administration succeeded only partly in this endeavour. The conferees on the Bill have adopted a provision that would allow US subsidiaries of foreign firms to participate in DOC-funded R&D programmes if the company has a parent company in a country which affords US-owned companies R&D

opportunities comparable to other companies and offers adequate and effective protection for intellectual property rights. The Administration succeeded in eliminating any reference to dumping /subsidies. The attached extract is what was agreed. The conference report now awaits House and Senate approval.]

At the end of the meeting Canner and his staff raised some matters raised by the US at the last Working Group of the CIME in

which the EC delegate was asked about new foreign takeover/acquisition regulations in France which allegedly differentiate between foreign - owned and EC -owned acquirors. According to Treasury in the former case a " normal " screening procedure applies whereas in the latter a "fast-track " procedure will apply. While no instances of this differentiated approach have been brought to Treasury's attention they are concerned by what they see as a violation by France of Article 58 of the Rome Treaty. We would be grateful for some guidance of how to respond to Treasury on this matter .

Corrado Pirzio-Biroli

DELEGATION OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES

The Delegation of the Commission of the European Communities presents its compliments to the Department of State and wishes to refer to a number of Bills at present before Congress and which, if enacted, would affect foreign investment in various ways.

The European Community is particularly concerned by some elements contained in these Bills. As far as data collection or reporting requirements are concerned, the European Community recognizes that seeking to improve the analysis of existing data on investment flows and the efficiency of tax collection are legitimate objectives. Nevertheless, we are concerned about several bills which would go beyond these objectives and require the disclosure of confidential data and impose a higher burden on foreign than on domestic enterprises.

Some measures are clearly discriminatory against foreign investors and contradict the principle of national treatment.

Furthermore, some of those Bills would require mandatory 'retaliation' actions by the US administration to restrict foreign investment under certain circumstances.

In addition, proposed amendments to the Exon-Florio statute would, in particular, broaden the factors to be considered by the Administration when deciding whether to intervene in a foreign takeover to include not only national security reasons, narrowly defined, but also the impact on the US's technological and industrial base. Discrimination against European companies ostensibly for reasons of national security is difficult to understand at a time when cooperation between the United States and Europe is more and more being called upon to respond to international challenges to our collective security.

The European Community notes several legislative proposals for campaign finance reform in the US. It does not, of course, comment on the underlying domestic policy issues. However, it

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would be concerned at any investment-related measure which discriminates between US corporations according to the nationality of the shareholders, thus infringing the principle of national treatment.

The anti-foreign investment sentiments reflected in the above-mentioned aspects of these Bills run counter to efforts being undertaken by the Community, the US and their partners, both in multilateral forums and bilaterally to create a more favourable climate for the free circulation of capital.

In particular, considerable efforts are under way within the OECD framework to strengthen the impact of the national treatment instrument. The Uruguay Round negotiations, especially the TRIMs, provide a further opportunity to reinforce these endeavours.

In addition, the US and the Community are currently engaged in a broadening and deepening of their relations based on the conviction that we have a wide range of common interests and share certain basic economic values. The existence of a level playing field to ensure the free flow of investments is of particular relevance in this context. It should be recalled that the free flow of investment provides substantial employment and inflow of capital into the US. A reduction of these flows would accordingly have a negative impact on the US economy.

The European Community appreciated the public positions taken by the US Administration to date on certain of the Bills in question.

However, the Delegation of the European Community urges the Department of State to take all necessary further measures to oppose restrictive provisions on foreign investment. It would welcome a clear declaration of general policy from the US Administration on this matter.

The Delegation of the Commission of the European Communities avails itself of the opportunity to renew to the Department of State the assurance of its highest consideration.

COMMISSION OF THE EUROPEAN
DELEGATION
WASHINGTON D.C.

Oct 19, 1990

Reporting requirements: the Lent/Exon Bills on foreign investment data which entail only improved analysis and coordination of investment data collected under existing arrangements, are acceptable to the EC. The others (e.g. Bryant) should be opposed on the grounds that they are burdensome and would lead to disclosure of confidential information. EC has already raised problems related to the Foreign Tax Equity Act of 1990 in its demarches of 28 June and 12 October. EC concerns here relate also to the extraterritorial powers given to US tax authorities.

Mandatory 'retaliation' is envisaged under the Fair Trade in Financial Services (Riegle) Bill and the Fair Investment Bill (Campbell).

Another piece of legislation of concern which has just surfaced is a Bill aimed at limiting foreign access to DOC-funded research. The Bill seeks access for US parent companies and their foreign subsidiaries to foreign R & D programmes and could deny access of US subsidiaries of foreign companies to DOC programmes even if access of foreign subsidiaries of US companies to foreign programmes was not denied.

The EC recognises that the Administration has opposed certain of the Bills e.g. Hollings Bill on local content provisions for BOCs in manufacturing and research and Markey Bill which would impose foreign ownership restrictions on Cable TV and Satellite companies in the US analogous to that in the 1934 Communication Act. The fact that many of the objectionable legislative proposals are likely to fall at the end of this Congressional session can in part be attributed to the positions taken by the Administration.

DEPARTMENT OF THE TREASURY
WASHINGTON

GENERAL COUNSEL

October 12, 1990

Dear Ms. Propper:

This letter constitutes the comments of the Department of the Treasury on the Federal Election Commission's notice of proposed rulemaking of August 22, 1990, to revise 11 CFR Part 110, concerning contribution and expenditure limitations and prohibitions (55 FR 34280). These comments have been coordinated with the Departments of Commerce and State.

Proposed 11 CFR 110.4(a)(iii) would define the term "foreign national" to include a domestic U.S. corporation unless U.S. citizens owned more than 50 percent of the corporation. This definition would prohibit a foreign-owned U.S. corporation from making contributions in connection with any election for any political office.

The Department of the Treasury opposes proposed section 110.4(a)(iii) because it appears to be inconsistent with long-standing U.S. policy of according national treatment to foreign-owned U.S. companies.

The U.S. is a party to numerous international agreements that obligate national treatment. This obligation exists under bilateral agreements such as the U.S.-Canada Free Trade Agreement, bilateral investment treaties, and treaties of friendship, commerce and navigation, as well as under multilateral agreements such as the OECD Code of Liberalization of Capital Movements. The Department is concerned that the adoption of proposed section 110.4(a)(iii) will be viewed as offensive to the principle of national treatment that is central to these agreements.

Constraints on the participation of foreign nationals in the U.S. electoral process already exist. Current law and regulations effectively insulate corporate political action committees (PACs) from foreign influence; existing rules preclude foreign nationals from contributing to, or managing, PACs. The Department of the Treasury is not aware of any abuses of the current rules that would justify what could be perceived as a retreat from our policy of according national treatment for foreign-owned U.S. corporations and their employees.

For these reasons, the Department of the Treasury urges that proposed section 110.4(a)(iii) be deleted from the final rulemaking.

Sincerely,

Jeanne S. Archibald
Acting General Counsel

Ms. Susan E. Propper
Assistant General Counsel
Federal Election COmmission
999 E Street, N.W.
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CONFERENCE REPORT ON HR 5021 Oct 20, 199

since unemployment compensation is an entitlement for temporary census workers who qualify for such payments under current law. In addition, the Bureau of the Census is required to reimburse the Unemployment Trust Fund under current law. The conferees, therefore, strongly urge that this item be reclassified as a mandatory item in the FY 1992 budget.

Amendment No. 35: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

SEC. 105. (a) Funds appropriated by this Act to the National Institute of Standards and Technology of the Department of Commerce for the Advanced Technology Program shall be available for award to companies or to joint ventures under the terms and conditions set forth in subsection (b) of this section, in addition to any terms and conditions established by rules issued by the Secretary of Commerce.

(b)(1) A company shall be eligible to receive financial assistance from the Secretary of Commerce only if—

(A) the Secretary of Commerce finds that the company's participation in the Advanced Technology Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Secretary of Commerce to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(B) either—

(i) the company is a United States-owned company; or

(ii) the Secretary of Commerce finds that the company has a parent company which is incorporated in a country which affords the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those funded through the Advanced Technology Program; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(2) The Secretary of Commerce may, 30 days after notice to Congress, suspend a company or joint venture from receiving continued assistance through the Advanced Technology Program if the Secretary of Commerce determines that the company, the country of incorporation of the parent company of a company, or the joint venture has failed to satisfy any of the criteria set forth in this subsection, and that it is in the national interest of the United States to do so.

(3) As used in this section, the term "United States-owned company" means a company that has a majority ownership or control by individuals who are citizens of the United States.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees have agreed to a modification to the Senate bill regarding the conditions under which companies are eligible to receive assistance under the Commerce Department's Advanced Technology Program. The conference agreement provides that a company shall be eligible to receive financial assistance from the Secretary of Commerce only if (a) the Secretary finds that the company's participation in the Advanced Technology Program would be in the economic interest of the United States, as evidenced by investments, employment, and agreement to promote manufacturing in the U.S., and (b) either the company is a United States-owned company or the Secretary finds that the company has a parent company in a country which affords U.S.-owned companies research and investment opportunities comparable to other companies and offers adequate and effective protection for intellectual property rights. The conference agreement also provides that the Secretary may suspend a company or joint venture which fails to satisfy any of these criteria. Finally, the conference agreement defines the term "United States-owned company" as a company that has a majority ownership or control by individuals who are citizens of the United States.

The Senate bill would have generally prohibited non-North American companies from participating in research programs funded under the Advanced Technology Program unless such foreign-owned companies could make a material contribution to the research project funded under the program; make a commitment to the American market, in terms of having research, manufacturing and employment in the U.S.; and had not repeatedly violated U.S. laws concerning dumping and unfair subsidies. In addition, the Senate bill would have required the foreign-owned company's country to offer U.S. firms reciprocal access to its government-supported research as a condition for eligibility in the program.

The House bill contained no similar provision.

Amendment No. 36: Deletes language proposed by the Senate which would have required the Secretary of Commerce to submit a report to appropriate Congressional committees by February 1, 1991, providing certain detailed information on procurement of the GOES weather satellites I, J, K, L and M and on contingency plans for a potential gap in GOES weather satellite products. The House bill contained no similar provision.

The conferees are agreed that the Secretary of Commerce shall provide a report to the appropriate committees of the Congress on the procurement of the weather satellites GOES I, J, K, L, and M which—

(1) describes the procedures associated with this procurement, including a discussion of the respective roles of NOAA and NASA, and analysis of prior and existing agreements between NOAA and NASA regarding spacecraft research and development responsibilities, and an identification of individual officials responsible for procurement decisions, including contract modifications;

(2) provides the original cost estimates and schedule for the spacecraft procurement, outlines the performance capabilities for the spacecraft and instruments specified in the contract including a description of anticipated improvements in operational weather warning and forecast systems which would result from the new GOES system design, and provides information on all changes to the original estimates and performance specifications, including the reason for each change and the implication of each change for cost, schedule, and weather service warning and forecast system performance;