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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

Papers received 7/29/81 2:45 p.m.

July 28, 1981

MEMORANDUM

TO: Members of the Committee on Foreign Investment in the United States (CFIUS)

FROM: Marc E. Leland, Chairman

SUBJECT: Background Papers for the July 29 Meeting

Attached are papers that will be discussed at the July 29th meeting of the CFIUS in Room 2113, Main Treasury. The paper on the Elf Aquitaine takeover of Texasgulf provides some background on that particular investment, examines some of the questions that have been raised with respect to the takeover, and includes agency responses to some of those questions.

The second paper, prepared by the Department of State, presents some possible guidelines for the CFIUS review of Canadian adquisitions in the U.S. related to the NEP.

Attachments

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UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURE(S)

fm 5/13/24

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Elf Aquitaine Takeover of Texasgulf Inc.

The CFIUS decided to review this investment for three reasons: (1) Elf Aquitaine is controlled 67 percent by the Government of France; (2) the takeover may be connected to the Canadian NEP; and (3) the French policy towards foreign investment and nationalization is now being formulated, and may have implications for this investment.

Summary of Offer

On June 26, 1981, E A Development, a wholly-owned subsidiary of Elf Aquitaine Inc. filed with the SEC a Schedule 14D-1 tender offer statement pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934. The French Government owns 67 percent of Elf Aquitaine's parent. The Schedule 14D-1 disclosed that EA was commencing on that date a tender offer for any and all outstanding shares of Texasgulf Common Stock and $3.00 Convertible Cumulative Preferred Stock, Series A, at $50 per share of Common Stock and $159.37 per share of Preferred Stock. The offer expires at 12:00 midnight, New York City time, on July 27, 1981, unless extended.

On July 6, 1981, E A announced by press release an increase in the price offered to $56 per share of Common Stock and $178.49 per share of Preferred Stock. The E A press release also stated that the board of directors of Texasgulf "has informed Elf Aquitane that it has decided to facilitate the investment decision of Texasgulf shareholders with respect to the acceptance of the Elf Aquitaine offer and will not oppose the offer."

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The maximum amount of funds required for consummation of the tender offer is approximately $2.8 billion. E A Developments' Schedule 14D-1 discloses that approximately $650 million of these funds will be provided from the proceeds of the sale of a Canadian affiliate, the Aquitaine Company of Canada, to the Canada Development Corporation (CDC). The balance will be obtained by borrowing under revolving credit facilities with numerous foreign banks. Following completion of the takeover E A Development (Elf) also plans to swap the Canadian assets of Texasgulf (43 percent of the total Texasgulf assets) it acquires through the takeover to the Canada Development Corporation (CDC) for the 37 percent of Texasgulf shares CDC currently holds.

The Parties*

Texasgulf Inc.

State of Incorporation -Texas
No. of common shares outstanding -71,738,662
No. of Series A preferred shares outstanding- 1,202,974
Trading - The common and the Series A preferred shares are traded primarily on the New York Stock Exchange, and are also listed on the Montreal and Toronto Stock Exchanges.
Market Prices - On June 25, 1981, the last full day of trading prior to the offer, the reported last sale price of the common shares was $37 1/2 and of the Series A preferred was $120.

Texasgulf is a natural resources company which finds, develops and produces chemicals, metals and energy produ-ts. Its products include sulphur, which is produced at three Frasch mines in

*The information presented with respect to parties to the tender offer is derived from the Schedule 14D-1 filing of Texasgulf.

Texas and three plants which recover sulphur from sour natural gas in Alberta, phosphate fertilizer materials, phosphogypsum, and hydrofluosilicic acid produced at the Lee Creek Mine in North Carolina, potash produced at the Cane Creek Mine in Utah and at the 40%-owned Allan Potash Mines in Saskatchewan, soda ash produced in Wyoming, metals, concentrates and sulphuric acid produced at the Kidd Creek Mine in Ontario, oil and gas produced in Texas, Louisiana, Oklahoma, Wyoming, the Gulf of Mexico, Saskatchewan and Alberta, and coal proudced at the Tomahawk Mine in Colorado. The Company owns woodlands in Pennsylvania, Ontario and North Carolina, and produces calcium phosphate feed supplements, feedgrade limestone and limestone aggregates in Nebraska and liquid fertilizer at Mount Olive, North Carolina. In addition, the Company has investments in an iron ore producing company in Western Australia, a Mexican sulphur company, a zinc-lead mine in the Canadian Arctic, and a gold-copper mine in Oregon.

Summary Financial Information

Fiscal year ended 12/31/80:

Sales $1,090,100,000

Net Income $325,600,000

Comparative first quarter results:

First Quarter 1981 sales - $275,323,000, as compared to $280,003,000 for prior year's first quarter.

First Quarter 1981 Net Income - $84,892,000, a decrease of 27.2% from prior year's first quarter.

E A Development, Inc.

Incorporated in Delaware on May 28, 1981, E A Development is a wholly-owned subsidiary of Elf Aquitaine, Inc., a Delaware corporation, and an indirect wholly-owned subsidiary of Societe Nationale Elf Aquitaine, a French corporation ("SNEA").

SNEA is approximately 67%-owned by Enterprise de Recherches et d'Activities Petrolieres, an agency of the French State. The balance of SNEA's shares are held by the public and by financial institutions, primarily in France, and are principally traded on the Paris Stock Exchange. In its Schedule 14D-1 filing, E A Development states that the French State's majority ownership of SNEA, and various requirements for budgetary and other approvals by the French State, give the French Government the ability to control SNEA.

SNEA and its affiliates (the "Elf Aquitaine Group") are an integrated petroleum organization operating internationally and engaged, directly or indirectly through subsidiaries, in all phases of the petroleum industry, including the exploration for crude oil and natural gas the production, purchase, transportation, refining, marketing and sale of petroleum and petroleum products and the manufacture, transporation, marketing and sale of products derived or extracted from crude oil and natural gas, e.g., petrochemicals, sulphur and sulphur products. To a lesser extent, the Elf Aquitaine Group is engaged in the production of nickel, in the mining of coal and other minerals, in the manufacture of various pharmaceutical and health products and in various light industrial activities. The production, refining and distribution of petroleum and natural gas represent the major source of income for the Elf Aquitaine Group, accounting for 90% of toal consolidated revenues for 1980. The operations of the Elf Aquitaine Group are conducted principally in Europe (including the North Sea) and West Africa and, to a lesser degree in North Africa, North America and the Middle East. The Elf Aquitaine Group is one of the two largest French oil companies and the largest French producer of natural gas.

Status

Assistant Secretary Leland, representing the Committee, informed representatives from Texasgulf, E A Development, and Elf Aquitaine, as well as the French Ambassador, that the CFIUS was reviewing the investment. On behalf of the Committee, he requested that the French Government delay the acquisition, to allow the Committee time to complete its review. All indications to date are that Elf Aquitaine is proceeding to purchase Texasgulf shares, and by Wednesday, July 29, should have ownership of over 51% of Texasgulf shares.

Possible Problems Associated With the Takeover

A number of the questions raised in connection with this investment might be characterized as possible problems associated with direct investment in the United States by foreign government-controlled entities. The Cabinet Council on Economic Affairs (CCEA) Working Group on International Investment Policy is currently investigating this general issue (see attached list).

Certain other questions relating specifically to this investment are:

-- <u>the national security implications</u>. There are no obvious problems.

-- <u>the potential effect on strategic minerals</u>. A preliminary assessment by the Department of Interior is that Texasgulf does not own reserves of minerals with strategic military applications or with no present substitutes for civilian application.

-- <u>the extent of Texasgulf leases on Federal lands</u>. The Department of Interior reports that Texasgulf has 19,000 acres of oil and gas leases onshore, 5,000 acres of potash leases, and 11,000 acres of sodium leases. While these holdings are considered very small, they could be affected by a negative determination by the Interior Department as it reviews French reciprocal status under the MLLA.

-- <u>Impact on non-stratetic minerals supply and price</u>. The Department of Interior reports that Texasgulf produces several minerals in large-enough quantities that restrictions on their role could be expected to increase the price of these minerals (attached). Complaints by the International Minerals and Chemicals Corporation (IMC) alleged that the proposed deal would have serious adverse effects upon the availability of sulphur for the production of phosphatic fertilizers, the supply of fertilizers available to U.S. agriculture, and the export trade of the U.S. in sulphur and fertilizers. The Federal Trade

Commission staff prepared an informal memorandum addressing these issues (attached). That memorandum concludes that IMC's concerns are not supported by the available evidence.

-- The impact of French nationalization policy. The GOF announced its intention to nationalize selected French corporations. This nationalization will include a transfer of control over certain U.S. subsidiaries of these corporations (see attached list) to the French Government. This raises questions of the competitive implications, if any, of this transfer of control.

-- Effect on stockholders not tendering shares. Elf Aquitaine has announced its intention to acquire 100% of Texasgulf. Shareholders not tendering their shares could be forced to sell their shares back to the Elf-controlled Texasgulf. State laws (Connecticut, in the case of Texasgulf) govern the rights of shareholders in such a case. Texasgulf reports to the SEC reveal that, with the exception of the Canada Development Corporation, no single shareholder owns more than 5% of Texasgulf.

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JUL 28 1981

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS (CCEA) WORKING GROUP ON INTERNATIONAL INVESTMENT POLICY

FROM: Marc E. Leland, Chairman

SUBJECT: Agency Reports on Possible Problems Arising From Direct Investment in the United States by Foreign Government-Controlled Companies

At the Working Group's first meeting on July 24, the Group agreed that individual papers should be prepared on each of the potential problems arising from direct investment in the United States by foreign government-controlled companies. The Group also agreed on individual agency assignments. The attached list contains the agreed agency assignments. In cases where more than one agency has responsibility for a potential problem, the lead agency has been underlined.

I would appreciate submission of the reports by September 4, so that they can be discussed by the full Working Group and incorporated into a report to the CCEA by the end of September.

As mentioned at the meeting, I would appreciate suggestions for additional questions to be added to the attached list.

Attachment

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Listing of Potential Problems Arising From Direct Investment in the United States by Foreign Government Controlled Companies

Competition Policy

-- Government supported circumventions of U.S. antitrust and unfair trade laws.	Justice USTR Commerce
-- Foreign government control over selected United States exports/imports.	USTR Commerce
-- Imposition of rigorous "buy national or home country" requirements on United States subsidiary purchases.	USTR Commerce
-- Formation of government cartels.	Justice
-- Foreign government manipulation of U.S. production. Foreign operators of the U.S. oil and gas leases may have interests that differ from our own i.e., foreign owners from oil-producing countries might shut in production from U.S. leases to maintain markets for their domestically-produced oil.	Energy Commerce
-- Foreign government access to information not available to the private business community could give government-controlled firms a distinct advantage.	Justice Treasury
-- Foreign government control of shares of non-strategic minerals could lead to supply or price pressures if these minerals are exported to the home country or elsewhere.	Interior Commerce
-- Absolute and/or preferential access to capital not available to private firms. For example are nationalized firms really at arms length with national banks.	Treasury State
-- High level political intervention and pressure to block or delay Administration of U.S. antitrust and unfair trade laws.	USTR State Treasury

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National Security

-- Investment in downstream energy production (refinery operations) may upset Defense security of supply. Defense / Energy

-- Investment in U.S. corporations under contract to produce weapons or equipment for the Department of Defense. Defense

-- Investments in sole-source or few-source suppliers of intermediate or of raw goods to defense industries (strategic minerals). Defense / Interior

-- Flexibility of operations under crisis or sub-crisis environments. Defense

-- Strict control of subsidiary operations (e.g. technology, product development, growth) could have national security implications; particularly industries such as specialized synthetic fuels, chemicals, high technology sectors, minerals extraction and processing. Defense / Commerce State

-- Extensive control by foreign concerns of U.S. energy service and distribution systems could create special regional security problems, i.e., localized control of gas stations or terminals. Defense / Energy Commerce

Tax Policy

-- Policy implications if a foreign government seeks to resolve a tax dispute at a high level bypassing normal channels. Treasury

-- Possible difficulty in obtaining books and records of foreign parent. Treasury

-- Negotiation of competent authority settlements in double taxation cases. Treasury

-- Freedom from taxation of dividends in certain circumstances. Treasury

-- Foreign governments have access to information, available under mutual assistance provisions of tax treaties, which include pricing and other economic data concerning the U.S. competitors of the domestic corporation which it controls. Treasury

-- Difficulty in obtaining data for U.S. tax purposes under mutual assistance provision when foreign corporations controlled by foreign government. Treasury

Disclosure

-- There may be difficulty in obtaining information where such information is held by non-controlled affiliates of the foreign investor or by unrelated foreign entities rather than by the entity required to make a pre-merger filing. Such entities may be beyond U.S. jurisdictional reach. Justice SEC

-- Problems in discovery by antitrust suit or actions under foreign corrupt practices act or anti-boycott legislation. Justice

Some other problems of disclosure are given in the tax and competition sections.

Political and Legal

-- Difficulty of United States residents suing foreign government-controlled U.S. subsidiaries. Justice

-- Normal legal action by the U.S. federal or state government may trigger action against U.S. investment abroad. USTR Commer State

-- Linkage of political, diplomatic, or military issues with economic issues relating to foreign government-controlled subsidiaries. Treasu State USTR Commer

--	High level political intervention to influence U.S. legal actions against foreign government owned subsidiary in the U.S.	Treasury State USTR Commerce
--	Possible use of corporate power to influence U.S. policy.	Treasury Commerce

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

July 8, 1981

MEMORANDUM

TO: Frank G. Vukmanic
Department of Treasury

FROM: Jack M. Campbell
Department of the Interior

SUBJECT: Response to Questions Concerning the Elf Aquitaine Purchase of Texasgulf, Inc.

During our meeting of July 2, you asked me to respond to two questions concerning the purchase of Texasgulf by Elf Aquitaine: 1. Could the purchase adversely affect domestic coal exports? and, 2. Could the purchase adversely affect the domestic strategic minerals position? The comments below reflect my preliminary review of these specific questions. The comments should not be read as a conclusion regarding whether or not the Elf Aquitaine purchase of Texasgulf will have a positive or negative effect on the U.S. economy. This judgment must be based on a review of these questions and many others. Similarly, these comments should not be read as support for or opposition to Federal involvement in the purchase of Texasgulf.

1. It is highly unlikely that this purchase could have a measurable effect, positively or negatively, on coal production in general or coal exports in particular. Texasgulf currently holds title to approximately 11 million tons of non-Federal coal reserves (located in Colorado). In the western states alone, total demonstrated coal reserves amount to approximately 243 billion tons.

Could future purchases by foreign interests of U.S. companies with coal holdings adversely affect coal prices or coal exports? In a word, the answer to this question is also likely to be, no. This is due to the fact that the volume of domestic coal resources is very large (estimated to be about 3 trillion tons), and the fact that the coal domestic industry is highly competitive (over 5,000 firms). The likely effect of large-scale future purchases of domestic coal (companies) by foreign interests is a substantial increase in coal exports. Such an increase should be looked upon favorably because of its effect on the U.S. trade balance. It is unlikely that coal exports could increase to a level sufficient to increase coal prices in the U.S., or endanger the adequacy of longterm supplies for domestic consumption.

2. The effect of the Elf Aquitaine purchase of Texasgulf on the U.S. strategic minerals position is less clear than the effect on coal prices and exports. Texasgulf produces several minerals which, while not strategic in the classic sense of the term, are important to U.S. industry. A partial listing of the minerals produced by Texasgulf relative to total U.S. production, consumption, and reserves is attached. Among these minerals, the U.S. imported 66% of its cadmium consumption, 13% copper, 28% iron ore, 8% lead, 66% potash, 45% silver, 11% sulfur, and 62% zinc in 1979.

If the purchase of Texasgulf by Elf Aquitaine were to lead to restrictions on the sale of these minerals (copper, potash, and zinc in particular) to U.S. consuming industries, it is reasonable to expect some increase in the price paid for the minerals. Texasgulf also operates large phosphate mines (particularly in Canada), but the domestic supply of this mineral is substantial and, therefore, supply restrictions would probably not result in significant price increases.

Texasgulf does not own reserves of the minerals that are thought of as being strategic because of their military applications or because there are no substitutes for their civilian applications at the present. Such minerals include cobalt, chromium, manganese, nickel, etc. The U.S. currently depends upon imports for a large percentage of total consumption of each of these minerals.

Texasgulf's ownership pattern does not suggest that purchase by Elf Aquitaine would raise U.S. strategic mineral concerns. Should foreign interests seek in the future to purchase U.S. companies holding reserves of minerals that are of strategic importance, the Federal Government may wish to evaluate the probability of such foreign interests denying production to U.S. minerals users.

Texasgulf, Inc.

Selected Mineral Production Compared With

Total U.S. Production, Consumption, and Reserves (1979)*

Mineral	Texasgulf Production (Tons)	Total U.S. Production (Tons)	Total U.S. Consumption (Tons)	Total U.S. Reserves (Tons)
Sulphur	2,269,500	11,700,000	13,300,000	175,000,000
Potash	701,900	2,243,000	6,600,000	300,000,000
Lead	13,700 1/	510,000	1,350,000	42,000,000
Copper	285,951 1/	1,430,000	2,210,000	101,000,000
Silver (Troy Oz.)	6,965,700 1/	38,300,000	175,000,000	1,510,000,000
Cadmium (Lbs.)	790 1/	1,590,000	4,670,000	110,000,000
Zinc	117,600	260,000	1,020,000 2/	48,000,000
Iron Ore	1,361,700 3/	84,000,000	127,000,000	25,000,000

* Texasgulf data includes domestic and foreign production

1/ Concentrates, not comparable with production, consumption, or reserve data

2/ Zinc slab

3/ Sinter fines and pellets

Sources: U.S. Bureau of Mines and Moody's Industrial Manual

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FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF COMPETITION

TO: Frank G. Vukmanic, Department of Treasury, Committee on Foreign Investment in the United States

FROM: Anthony Low Joseph, Attorney, Bureau of Competition; David I. Kass, Robert P. Rogers, Economists, Bureau of Economics, Federal Trade Commission

DATE: July 23, 1981

SUBJECT: Elf Aquitaine's Acquisition of Texasgulf, Inc.; Answers to Complaints of International Minerals & Chemical Corporation

INTRODUCTION

At the conclusion of the staff meeting of the Committee on Foreign Investment in the United States, on July 20, 1981, the representatives of the Federal Trade Commission were asked to prepare a memorandum addressing issues raised by International Minerals & Chemicals Corporation ("IMC") in the letter it sent to various government agencies. A copy of IMC's letter of July 6, 1981, to the FTC is attached.

The FTC is conducting an inquiry into the effects on competition of Elf Aquitaine's proposed acquisition of Texasgulf, Inc. and the related sale of Texasgulf's Canadian business to Canada Development Corporation. That inquiry has not been completed. Therefore, the facts and conclusions stated herein are subject to modification as further information is obtained.

This informal memorandum has been prepared solely as an aid for the CFIUS staff and should not be disclosed to anyone other than Committee members and their staff. It has not been reviewed or approved by the Commission, the Director of the Bureau of Competition or the Director of the Bureau of Economics, and does not necessarily represent the views of the Commission, of any individual Commissioner, or of the two Directors.

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In its letter to the Federal Trade Commission, IMC expressed its concern that the acquisition of Texasgulf, Inc. ("TG") by Elf Aquitaine ("EA") would have serious adverse effects upon the availability of sulfur in the United States for the production of phosphatic fertilizers, upon the supply of those fertilizers available to United States agriculture, and upon the export trade of the United States in sulfur and fertilizer.

1. Availability of Sulfur

In economic terms, the availability of sulfur to United States customers should be analyzed on the basis of the availability of sulfur from the United States, Canada, and Mexico, because the United States consumes sulfur produced in all three countries. In 1980, twenty million tons of sulfur were produced in these three countries: 10.4 million tons were produced in the United States, 7 million tons were produced in Canada, and 2.5 million tons were produced in Mexico. Twelve million tons of sulfur were consumed in the United States, including imports of 1.5 million tons from Canada and 1.0 million tons from Mexico. The United States exported 1.6 million tons of sulfur to many countries.

Based on the information presently available, Texasgulf's sulfur production in fact accounts for a relatively modest portion of the sulfur potentially available to its phosphate fertilizer competitors. Texasgulf produced 1.5 million tons of sulfur in the United States in 1980, equal to 14% of U.S. production, 12% of U.S consumption, and 8% of North American production. At this rate of production, TG's U.S. sulfur reserves will be exhausted in ten years. In addition, Texasgulf produced 53,000 tons of sulfur in Canada and purchased 695,000 tons from Canada and Mexico.

To supply its North Carolina phosphate fertilizer production, Texasgulf will consume internally almost one million tons of its 1.5 million tons of U.S.-produced sulfur in 1981. Therefore, from its own U.S. production, Texasgulf will only be able to supply 500,000 tons of sulfur to other sulfur consumers, or about four percent of U.S. consumption. Of course, it may also purchase sulfur for resale to U.S. phosphate companies.

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If, as a result of Elf Aquitaine's ownership of Texasgulf, it is hypothesized that the 500,000 tons of TG's sulfur production not used internally is sent to France and thereby removed from the U.S. market, it is not unreasonable to conclude that the resulting four percent reduction in domestic supplies could be replenished in the form of additional imports of recovered sulfur from Canada and Mexico, or from a reduction in exports by other U.S. producers. The two largest U.S. sulfur producers exported almost 900,000 tons in 1980.

Furthermore, independent of this merger, Texasgulf has been planning to double its fertilizer production by 1985, which would absorb TG's remaining 500,000 tons of sulfur production in any event. Thus, it would appear that IMC, which currently purchases only 11% of its sulfur needs from TG, is incorrect in its allegation that this merger would reduce significantly the availability of sulfur in the United States.

Canada and Mexico were responsible for about 45% of North American production of sulfur in 1980. If these two governments were, at some future date, to form a sulfur cartel, the United States would be affected to some extent since 20% of our current consumption originates in those two nations. The potential for the formation of this cartel, however, is probably independent of the Elf Aquitaine acquisition.

France, whose annual needs for sulfur equal about two million tons, is currently self-sufficient. It is projected, however, that it will increasingly have to import sulfur to satisfy its fertilizer industry in the years ahead. A maximum projected French shortfall of two million tons, however, represents only four percent of current total world production of fifty million tons. Thus, France's import needs do not represent a significant percentage of world production. To the extent that Elf Aquitaine's Texasgulf operations becomes a principal sulfur supplier to France, equal supplies of sulfur from those who would have been supplying France would then be released to satisfy the worldwide demand outside of France.

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2. Availability of Phosphatic Fertilizer

Phosphatic fertilizers are produced from phosphate rock and sulfur. In 1980, the U.S. produced more than 54.4 million tons of phosphate rock and consumed 40.3 million tons. No other country in the Western Hemisphere produced significant quantities of phosphate rock. In 1980, the U.S. exported 14.3 million tons of phosphate rock, about 26% of U.S. production.

Texasgulf's 1980 phosphate rock production was 4.3 million tons, about 8% percent of U.S. production and 11% of U.S. consumption. At this rate of production its reserves would last 185 years. However, TG has plans to expand its phosphate fertilizer production and thereby its phosphate rock production. If its production were doubled, its reserves would last 92 years. TG's plans to increase production are paralleled by IMC and Williams Companies' (Agrico) plans. The latter two are the largest U.S. phosphate rock producers.

If TG were to increase its exports substantially as IMC hypothesizes, an adequate supply would remain available in the U.S. Several of the largest phosphatic fertilizers producers have plans to expand their production. Furthermore, the U.S. exports large quantities. Texasgulf's increased exports would be likely to go to existing customers of IMC and the other U.S. exporters. In that event, the latter group's displaced exports should be available to U.S. consumers. Should Elf Aquitaine cause Texasgulf's fertilizer production to increase at a faster rate than before the acquisition, the increased supply should lead to lower prices if other producers do not cut back their production.

3. Effect On U.S. Exports

IMC's concerns about the effect of the Elf Aquitaine acquisition on U.S. exports have been addressed in the separate discussions of the effect of the acquisition on the supply of sulfur and phosphatic fertilizers.

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Conclusion

On the basis of currently available information, IMC's concerns with respect to the adverse effects of Elf Aquitaine's acquisition of Texasgulf on the United States supplies of sulfur, phosphate fertilizers, and export trade in sulfur and fertilizer are not supported in terms of its effects on the U.S. economy. Analyses of current and projected market conditions do not indicate supply problems in the United States sulfur and phosphate fertilizer markets that were not present before the proposed acquisition.

Attachments: (1) IMC Letter dated July 6, 1981
(2) List of Sources

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KENNETH J. BURNS, JR.
Vice President and
General Counsel

INTERNATIONAL MINERALS & CHEMICAL CORPORATION

July 6, 1981

Federal Trade Commission
Washington, D. C.

Attention: Chief, Bureau of Competition

Re: Texasgulf Inc. - Proposed Acquisition by Societe Nationale Elf Aquitaine

Gentlemen:

For the reasons set forth in the attached material, International Minerals & Chemical Corporation wishes to bring to your attention and consideration its strong objection to the above acquisition.

We believe the acquisition would have serious adverse effects upon the availability of sulphur in the United States for the production of phosphatic fertilizers, upon the supply of those fertilizers available to United States agriculture, and upon the export trade of the United States in sulphur and in phosphatic fertilizers, all of which in our view would appear to constitute a violation of Section 7 of the Clayton Act.

Since the proposed acquisition is pursuant to a contract between Societe National Elf Aquitaine and Canada Development Corporation, Section 1 of the Sherman Act would also appear to be violated.

IMC's interests as a major purchaser and consumer of sulphur are in our view jeopardized by the acquisition. Our interests as a major producer of phosphate rock, phosphatic fertilizers, and animal feed phosphates for domestic and export trade will in our view be injured by the acquisition. We think similar adverse impacts will be inflicted upon other U.S. companies in these industries and ultimately upon U.S. agriculture.

2315 Sanders Road • Northbrook, Illinois 60062 • (312) 564-8600

We urge that the Commission conduct a thorough investigation of the proposed acquisition and that, if it agrees the acquisition appears to violate the antitrust laws, it institute appropriate legal proceedings to prevent the acquisition.

Very truly yours,

Kenneth J. Burns Jr.

KJB:hm

The Proposed Texasgulf Takeover

1. Societe Nationale Elf Aquitaine ("EA") is 67% owned and controlled by the French government. 1980 worldwide sales and net profits totalled $13.4 billion and $1.1 billion. EA's bid for Tg has the approval of the French government. If the bid succeeds, the actions of EA in controlling Tg will be dictated by the French government for the interests of France. According to a filing with the SEC incident to the bid, EA's board decisions are monitored by the government to ensure its decisions "are not inconsistent with French government policy".

2. EA made its bid in concert with Canada Development Corporation which is about 50% owned by the Canadian government. The spinoff of Tg's Canadian assets to CDC as a part of EA's bid for Tg effectively substitutes Canada's ownership of these assets for Tg's, in line with Canada's announced hostility to foreign ownership of natural resources in Canada. The foregoing SEC filing states that Canada's Foreign Investment Review Act is not applicable to the bid or the spinoff.

3. At least three of Tg's directors are designees of CDC. They know all about Tg, its assets and potential, and have necessarily applied nonpublic information they acquired as Tg directors (and therefore as fiduciaries) to help in the concerted plan by EA and CDC to dismember and divide Tg between themselves.

4. France and Canada are pursuing policies of government ownership and control of industry. The U.S. government and U.S. citizens do not have reciprocal rights. In Canada, U.S. investment is subject to harassment, tax discrimination, restrictions on new entries, and restraints on conveyance to non-Canadians. The latter depreciates the value of U.S. property.

5. France is the largest importer of phosphate rock and phosphate chemical fertilizers in the world. These ingredients are essential to provide fertilizers for French agriculture.

6. EA's ownership of Tg's U.S. assets would result in French government control of:

a. Tg's Frasch sulphur reserves in Texas of about 15.1 million long tons. Tg is the third largest Frasch producer in the U.S. It produced approximately 1.5 million tons of Frasch sulphur in Texas in 1980. This is about 23% of total U.S. Frasch sulphur production and 15% of total U.S. elemental sulphur production. Sulphur is an essential ingredient in the production of phosphoric acid, from which all phosphate chemical fertilizers are made.

b. Tg's North Carolina phosphate ore reserves of 1.2 billion tons proven and presently recoverable and an additional one billion tons classified as deposits. They will produce an estimated 800 million tons of phosphate rock and are the largest reserves of any U.S. producer. Measured by current prices paid for phosphate rock reserves in Florida, these reserves and deposits alone would be worth in the neighborhood of $850 million. The magnitude of these reserves is also illustrated by the fact that the largest U.S. producer of phosphate rock (IMC) has reserves of about 150 million tons and deposits of an additional 225 million tons. Tg's 1980 rock production was 4.3 million tons. Its production capacity is 5 million tons, about 7.7% of domestic production capacity. It is the fifth largest rock producer in the U.S.

c. Tg's North Carolina phosphate chemicals facilities which are projected to have a capacity of one million tons of P_2O_5 by the end of 1981. 845,000 tons were produced in 1980. Its production capacity will be approximately 8.8% of domestic production capacity upon completion of the expansion currently underway. It is currently the fourth largest U.S. producer of phosphoric acid and with the expansion will become the third largest. These facilities also produced 773,000 tons of DAP and TSP in 1980, approximately 5.5% of domestic production.

7. Under French control, Tg would export as much of its sulphur production as the French government thinks desirable to French P_2O_5 producers. This would have the effect of:

   a. reducing supplies of sulphur for U.S. production of P_2O_5; and

   b. reducing U.S. production of phosphate chemical fertilizers and animal feed phosphates.

8. EA is a significant producer of sulphur in its own right. In 1980, it produced 1.8 million metric tons. The acquisition of Tg's sulphur reserves and facilities would result in French government control of about 4 million tons, about 8-9% of the world sulphur supply, at a time when sulphur is in tight supply worldwide, as well as in the U.S. A recent report of the Federal Trade Commission, commenting upon prices of phosphatic fertilizers, stated that prices jumped in 1980 due to "increased demand coupled with a worldwide sulfur shortage caused by distribution problems and the increasing cost of natural gas used to produce sulfur." (Competition in Farm Inputs: An Examination of Four Industries. Feb. 1981, p. 22.) The report later states that "the sulfur supply situation has been the critical factor... During 1979-80 both phosphoric and sulfuric acid experienced large price increases which are attributed to increased fertilizer demand, sulfur shortages, and increasing energy costs." (p. 23) A recent report in Business Week states "even European fertilizer companies are now looking for sulfur supplies." (5/25/81 issue, p. 152).

9. Under French control of the foregoing minerals essential to fertilizer production, Tg would export as much of its phosphate rock and phosphate chemicals to France as the French government thinks desirable for the French fertilizer market and French agriculture. This would have the effect of:

   a. reducing supplies of rock and chemicals for the production of phosphate fertilizers for U.S. agriculture; and

b. reducing U.S. exports by other phosphate producer-exporters.

This would come at a time when Occidental Petroleum is committed to export one million m/t y of superphosphoric acid to Russia.

10. In addition to control of the foregoing minerals essential to fertilizer production, the French government would also control:

- Tg's Wyoming trona reserves of about 170 million tons, from which about 95 millions tons of soda ash can be produced. Tg's soda ash production in 1980 was 877,000 tons. It is a major producer of soda ash in the U.S.

- Tg's potash reserves in Utah of about 15.5 million tons. The U.S. currently imports about 70% of its potash needs from Canada.

- Tg's domestic oil and gas business. Tg's proved reserves at December 31. 1980 in both the U.S. and Canada were 5.7 million barrels of oil and 212.6 billion cubic feet of gas. A breakout of domestic reserves is not available. Federal leases in the Gulf of Mexico are involved.

11. The aforesaid SEC filing, which includes as exhibits the 89-page contract between EA and DCD and the tender offer by EA for Tg shares, reflects that EA is not required to go through with the bid if certain events occur prior to the time of acceptance, including among others:

1. An action is instituted or threatened by any government agency or by any other person which challenges the bid or EA's acquisition of Tg.

2. Tg issues additional shares of any class of stock or authorizes or intends to propose a merger or disposition not in the ordinary course of business.

3. Another offer is made by another person for some or all of Tg shares.

The time for acceptance is midnight, Monday, July 27, 1981, subject to extension by EA.

12. The SEC filing further reveals that a Hart-Scott-Rodino filing was made on June 26, 1981, and that the required 15-day waiting period will expire July 11 unless further information is requested by the FTC or the Antitrust Division, in which event the waiting period would be extended at least 10 days after receipt of the additional information.

13. The filing also states that EA has not complied with the takeover statutes of any state, including those of Louisiana, Nebraska, and Utah (which it says may purport to apply to the bid), and instead has commenced suits in those three states to declare the respective statutes invalid.

KJB/ 7/6/81

Sources

Texasgulf, Inc., 1980 Annual Report, 1980 Form 10-K Report, and Telephone Interview with Earl L. Huntington, Vice President and General Counsel.

Freeport-McMoRan, Inc., Joint Proxy Statement — Prospectus, Ferburary 26, 1981.

Duval Corporation, subsidiary of Pennzoil Co., 1980 Form 10-K Report.

International Minerals and Chemical Corporation, letter of July 6, 1981, and attachment.

Sulfur in 1980, Minerals Industry Surveys, U.S. Department of Interior, Bureau of Mines, April 23, 1981.

Phosphate Rock, Preprint from the 1980 Bureau of Mines Minerals Yearbook, U.S. Department of Interior

British Sulfur Corporation, Statistical Supplement, No. 22, January-February 1981.

R.F. Leibenluft, Competition in Farm Inputs: An Examination of Four Industries, Office of Policy Planning, Federal Trade Commission (February 1981).

A Turning Point for Lacq Sulphur, Sulphur, No. 151, November-December 1980.

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

July 24, 1981

MEMORANDUM FOR: Frank Vukmanic

From: Jeffrey W. Lins, Acting Director
Office of International Investment

JWLins

Subject: U.S. subsidiaries of French firms

Forwarded herewith is a list of U.S. subsidiaries of major French firms which O.I.I. has identified as being primary candidates for governmental nationalization under the administration of President Mitterand.

Other companies may be considered for nationalization. If you are aware of any, please advise me and we shall add them to the list.

Enclosure

FRENCH PARENT COMPANY	U.S. SUBSIDIARY	% FOREIGN OWNED
Agache - Willot (retailer)	Christian Dior (retailer)	100
	Korvettes (retailer)	100
	Ted Lapidus (retailer)	100
Alsthom - Atlantique (industrial equipment)	Sylvania Unelec International	32
Avion Marcel Dassault - Breguet Aviation (aerospace)	Dassault International (holding company) for	100
	Falcon Jet Corp	50
	U.S. Alpha - Jet (aircraft sales)	50
CIE Francais Des Petroles (oil, gas, coal)	Total American Inc (oil products)	50
	Total Petroleum North America Ltd. (oil refining & marketing) holding Co. for:	50
	Traverse Corp. (oil, gas, distribution)	100
	Vickers Petroleum Corp. (marketing)	100
	Photon Power Corp. (solar energy	56
	Frontier Coal Co. (mining)	100
	Anthracorp Inc. (mining)	

FRENCH PARENT COMPANY	U.S. SUBSIDIARY	% FOREIGN OWNED
CIE. Generale D'Electricite (Electric/electronic products telecommunications)	Cogenel Inc (electric/electronic products)	
	Score Inc. (electronic products)	100 100
	Semi Process Inc. (electronic products - JV with CIT Alcatel)	25
C.I.T. Alcatel (electronics)	Friden Mailing Equipment Inc.	80
	Citcom Systems Inc. (telecommunications equipment)	100
	Reliable Communications Products Company (communications equip - Mfg)	70
	Telecommunications Switching Systems (communications equip. - mfg)	100
	Semi Process Inc.	25
Creusot - Loire (nuclear energy, steel,	Creusot - Loire Steel corp. (holding co. for)	100
	C.L. Special Products Co. (steel forgiugs - mfg.)	100
	U.C.L. Securities (security Co.)	
	Phoenix Steel Corp. (steel products)	11 (direct) 45 (indirect thru UCL)
	C.L. Rail Trucks Inc.	100

FRENCH PARENT COMPANY	U.S. SUBSIDIARY	% FOREIGN OWNED
Pechney Ugine Kuhlmann (diversified, incl. nuclear, steel, chemicals)	Pechiney Ugine Kuhlmann Development Inc. (holding Co. for)	100
	Howmet Aluminum Corp. (fabricator - mfg)	100
	Howmet Turbine Components (steel products - mfg)	100
	Intsel Corp (metals, chemicals, ores - mktg)	100
	Pechiney Ugine Kuhlmann Corp (steel products - mktg)	100
	Ugine Kuhlmann of America (chemicals and dyestuffs - mktg)	100
Rhone - Poulenc S.A. (chemicals)	Rhone - Poulenc S.A. (holding Co. for)	100
	Morton Norwich Products Inc. (chemicals, Pharmaceuticals - mfg)	20.5
	Rhodia, Inc. (chemicals - mfg)	100
	Rhone - Poulenc Chemical Co. (chemicals - mfg)	100
	Rhone - Poulenc Systems Co. (film, microfilm - mfg)	100

Thomson - CSF (electronics)	Thomson Corp. of America (holding Co. for:)	100
	Dumont Electron Tube Devices Corp. (electronic components - mfg)	100
	Nucleonic Products Co. Inc. (electronic products - mfg)	100
	Cameca, Inc. (scientific instruments - mfg)	100
	CGT Corporation (electronic simulators - mfg)	100
	Thompson - C.S.F. Inc (electronic products - mktg)	100
	Thompson - CSF Electron Tubes (electronic tubes devices - mfg)	100
	Thompson - CSF Laboratories (broadcast equipment - mfg)	100
USINOR (steel - mfg.)	Usinor Industries Inc. (holding Co. for)	100
	Beckley Lick Run Mining Co. (steel - mfg)	100
	Chatillon - Goroy U.S. (carbon wire products)	100
	Hawley Coal Mining Corp. (joint (coal mining) venture)	
	Toledo Pickling and Steel Service Inc (steel products - mfg)	
	Usinor Steel Corp. (steel products - mfg)	100

FRENCH PARENT COMPANY	U.S. SUBSIDIARY	% FOREIGN OWNED
Agache - Willot (retailer)	Christian Dior (retailer)	100
	Korvettes (retailer)	100
	Ted Lapidus (retailer)	100
Alsthom - Atlantique (industrial equipment)	Sylvania Unelec International	32
Avion Marcel Dassault - Breguet Aviation (aerospace)	Dassault International (holding company) for	100
	Falcon Jet Corp	50
	U.S. Alpha - Jet (aircraft sales)	50
CIE Francais Des Petroles (oil, gas, coal)	Total American Inc (oil products)	50
	Total Petroleum North America Ltd. (oil refining & marketing) holding Co. for:	50
	Traverse Corp. (oil, gas, distribution)	100
	Vickers Petroleum Corp. (marketing)	100
	Photon Power Corp. (solar energy	56
	Frontier Coal Co. (mining)	100
	Anthracorp Inc. (mining)	

FRENCH PARENT COMPANY	U.S. SUBSIDIARY	% FOREIGN OWNED
CIE. Generale D'Electricite (Electric/electronic products telecommunications)	Cogenel Inc (electric/electronic products)	
	Score Inc. (electronic products)	100 100
	Semi Process Inc. (electronic products - JV with CIT Alcatel)	25
C.I.T. Alcatel (electronics)	Friden Mailing Equipment Inc.	80
	Citcom Systems Inc. (telecommunications equipment)	100
	Reliable Communications Products Company (communications equip - Mfg)	70
	Telecommunications Switching Systems (communications equip. - mfg)	100
	Semi Process Inc.	25
Creusot - Loire (nuclear energy, steel,	Creusot - Loire Steel corp. (holding co. for)	100
	C.L. Special Products Co. (steel forgiugs - mfg.)	100
	U.C.L. Securities (security Co.)	
	Phoenix Steel Corp. (steel products)	11 (direct) 45 (indirect thru UCL)
	C.L. Rail Trucks Inc.	100

FRENCH PARENT COMPANY	U.S. SUBSIDIARY	% FOREIGN OWNED
Pechney Ugine Kuhlmann (diversified, incl. nuclear, steel, chemicals)	Pechiney Ugine Kuhlmann Development Inc. (holding Co. for)	100
	Howmet Aluminum Corp. (fabricator - mfg)	100
	Howmet Turbine Components (steel products - mfg)	100
	Intsel Corp (metals, chemicals, ores - mktg)	100
	Pechiney Ugine Kuhlmann Corp (steel products - mktg)	100
	Ugine Kuhlmann of America (chemicals and dyestuffs - mktg)	100
Rhone - Poulenc S.A. (chemicals)	Rhone - Poulenc S.A. (holding Co. for)	100
	Morton Norwich Products Inc. (chemicals, Pharmaceuticals - mfg)	20.5
	Rhodia, Inc. (chemicals - mfg)	100
	Rhone - Poulenc Chemical Co. (chemicals - mfg)	100
	Rhone - Poulenc Systems Co. (film, microfilm - mfg)	100

Thomson - CSF (electronics)	Thomson Corp. of America (holding Co. for:)	100
	Dumont Electron Tube Devices Corp. (electronic components - mfg)	100
	Nucleonic Products Co. Inc. (electronic products - mfg)	100
	Cameca, Inc. (scientific instruments - mfg)	100
	CGT Corporation (electronic simulators - mfg)	100
	Thompson - C.S.F. Inc (electronic products - mktg)	100
	Thompson - CSF Electron Tubes (electronic tubes devices - mfg)	100
	Thompson - CSF Laboratories (broadcast equipment - mfg)	100
USINOR (steel - mfg.)	Usinor Industries Inc. (holding Co. for)	100
	Beckley Lick Run Mining Co. (steel - mfg)	100
	Chatillon - Goroy U.S. (carbon wire products)	100
	Hawley Coal Mining Corp. (joint (coal mining) venture)	
	Toledo Pickling and Steel Service Inc (steel products - mfg)	
	Usinor Steel Corp. (steel products - mfg)	100

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Possible Guidelines for CFIUS Review of Canadian Investments in the United States which are Related to Canada's National Energy Program (NEP)

CFIUS may wish to adopt guidelines for reviewing Canadian investment in the United States related to the National Energy Policy which, to the extent practicable, mirror Canadian practice along the lines of the Canadian NEP and FIRA practices described above (background paper attached). For example:

1. CFIUS should review all Canadian investment in U.S. oil and gas enterprises. U.S. energy resources corporation means any business entity organized or existing under U.S. laws engaging in the exploration for, or the development, production or transmission of crude oil or gas (excluding refining and processing, storage, distribution, and wholesale and retail selling).

2. Since FIRA considers control to be five percent or more of the shares of a corporation whose stocks are publically traded, CFIUS could adopt a similar guideline. Thus CFIUS would review Canadian investments of five percent or more of any class of voting U.S. securities of a U.S. energy resources corporation where such corporation will be directly or indirectly owned by a Canadian person, partnership, limited partnership, syndicate, or other group.

3. Since FIRA does not allow U.S. energy companies to invest in unrelated areas, CFIUS could create a list of major Canadian energy companies and review all their non-energy investments of five percent or more of any U.S.

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corporation.

Use of the five percent or more rule does limit the scope of investments to be reviewed to acquisitions of public corporations. It would exclude reviews of Canadian investments in private corporations or use of other vehicles for establishing a U.S. corporation outside of the SEC jurisdiction. In the strict sense, we would not be using a mirror-image approach to the Canadians in this regard. Yet, under the present authority of CFIUS, this could not be done. This approach would be consistent with the present CFIUS guidelines for reviewing investments that may have significant national interests. It would also be in line with recent Congressional concerns over major takeovers of U.S. energy corporations by Canadians.

As for review of Canadian energy companies' non-energy investments in the U.S., CFIUS review becomes more complicated. First a listing of major Canadian energy companies would have to be compiled according to certain criteria (for example the top ten or twenty from a Fortune-500 type listing). Once the list is compiled, CFIUS would have to publish the list (or at least inform Canadian energy companies affected) stating that CFIUS would review their non-energy investments in the U.S. To augment the voluntary notification by these companies CFIUS would have to cross-check this list with the information from the SEC's Schedule 14D. The amount of time spent in this effort may prove to be great and therefore not timely enough to complete a review before conclusion of a merger.

Notification Procedures

Notification of the CFIUS review on Canadian investment in the U.S. could take the following forms:

-- Publication in the Federal Register of the types of Canadian investment that the CFIUS will review and thus require notification.

-- Telegram to U.S. Embassy in Ottawa for use in publicizing and explaining the review process.

-- Letters sent to prospective Canadian investors who have filed a tender offer to the SEC according to Schedule 14D informing them of the CFIUS review and requesting cooperation. Establish procedure whereby SEC is to notify CFIUS.

Drafted: EB/IFD/OIA:DAOlive:vb
7/24/81:x22726

U.S. INVESTMENT IN CANADA: OWNERSHIP UNDER THE FIRA AND THE NEP

INTRODUCTION

The Canadian government, through the Foreign Investment Review Agency (FIRA), and the still-pending National Energy Program (NEP), is attempting to establish firm, clear rules and procedures for determining ownership and control of energy resource companies. This is important as eligibility for the extraordinary incentives and taxation treatment of the NEP is keyed to the degree of Canadian ownership. Non-Canadians, corporations with less than 50 percent Canadian ownership, may continue existing energy exploration and production but are not eligible for incentives or for new production licenses. The incentives program largely substitutes for the old depletion allowances.

While the FIRA has been in place for about seven years, the NEP was first proposed in October, 1980, and has not yet been formally enacted into law. However, FIRA has been implementing the NEP as a national economic policy of Canada. The U.S. business community has already been affected by the proposals and an unprecedented wave of merger and acquisition activity has resulted. While U.S. investment is preponderant, and thus bearing the brunt of the NEP's effects, European investors are also affected.

Background

Canada sought to "Canadianize" its commerce and industry because of a nationalistic urge to deemphasize foreign, chiefly American, economic and cultural influences. Despite historically excellent relations, the large (over 70 percent) U.S. ownership of Canada's energy resource companies was considered unhealthy. Two detailed bills, the Canada Oil and Gas Act (December, 1980), and the Energy Security Act, or ESA, (June, 1981) have been proposed to remedy the situation. The Parliament expects to act by fall, 1981, on the legislation. The latter, presently a "Discussion Draft," consists of four new acts and amendments to six existing acts.

The Canadian ownership rate (COR) rules were originally presented in November, 1980, by the Petroleum Monitoring Agency (PMA) for comments by the (Canadian) public. Modified rules were announced by Energy, Mines, and Resources Minister Lalonde in February and published in April, 1981. The modifications provided for less administrative effort than originally expected, but still attempted to accurately measure the degree of Canadian ownership. The portion of the Energy Security Act which is concerned with ownership is the "Determination of Canadian Ownership and Control Act."

Determination of Canadian Ownership and Control Act

The test of Canadian control is based on definitions set out in the Foreign Investment Review Act. There will also be a provision for further regulation-making power in the Determination of Canadian Ownership and Control Act to clarify that Canadian control means control in fact, not simply *de jure* control, in order to ensure that where Petroleum Incentives Program (PIP) grants are paid to a corporation or partnership with both Canadian and foreign shareholders, it is the Canadians that in fact control the corporation or partnership and that the foreign participation is essentially passive.

The original NEP statement also declares that FIRA will act to prevent acquisitions by non-Canadians of Canadian firms that themselves possess mineral rights and/or are eligible for PIP grants.

Generally, FIRA considers control to be 5 percent or more of the shares of corporation whose shares are publicly traded or 20 percent or more of the shares of a corporation whose shares are not publicly traded.

The Determination of Canadian Ownership and Control Act also establishes a framework for regulations designed to ensure that the COR measures the underlying or beneficial ownership of oil and gas enterprises, not simply the address of record of shareholders. This is to ensure that PIP grants have their desired effect of conferring benefits on Canadian investors.

Under the Petroleum Incentives Program Act, another of the parts of the ESA, Ministerial discretion is provided for determining Canadian control status and fixing the COR in the period under three circumstances: (1) before the PMA is able to process applications; (2) during a grace period after the COR of a company has declined due to circumstances beyond its control; and (3) for reducing a COR by the number of percentage points attributable to ineligible persons.

The Minister of Energy, Mines and Resources is also given discretion to relieve cases of "injustice" in the application of the adjustment formulae and to prevent abuse in cases where the rules are being manipulated by the applicant.

Discussion

Certificate

Individuals and businesses will require a certificate which sets out both their Canadian ownership rate (COR) and their control status.

The first step is to determine status as a "qualified applicant." Canadian citizens and permanent residents are qualified applicants. Canadian corporations, partnerships, and trusts, including highly liquid pension plans, are also qualified applicants. A joint venture may not apply--the members, if they individually qualify, may apply separately.

Pension plans, life insurance companies, and other such pooled funds may, if 90 percent of their assets are held for Canadians, be presumed to have a COR of 100 percent. Passive investors are treated likewise.

Small business, (assets under Can.$5MM, revenues under Can.$10MM) are rated as 100 percent if Canadian controlled and at least 50 percent owned by individuals with Canadian addresses.

Certain other corporations, the PMA has stated, including the Canada Development Corporation, "generally thought of as being owned exclusively, or almost exclusively, by Canadians will be presumed to have a COR of 100 percent."

Beneficial Canadian Ownership

Formal Equity: Different classes of shares of a corporation will, when similar, be combined. When dissimilar (e.g. convertible preferred versus common) they will be weighted for calculation of the COR. If a meaningful weighted average cannot be calculated, the COR will be the lower COR of the various classes being measured. The NEP goes to the third level and seeks to go beyond an address check. The PMA has developed a series of algebraic formulas for calculation of the COR. These are applied to arm's length and non-arm's length relationships to determine exactly the COR.

Informal Equity: Royalty agreements, management services, and the like may constitute greater equity than traditional formal equity. In such cases, informal equity may be taken into account for COR calculation.

Canadian Control

Certificates will indicate control status as well as COR. The FIRA test as described under Determination of Canadian Ownership and Control Act will be used in order to more carefully ascertain effective control.

Special Considerations

Where there is ownership interest held through a nominee or in unidentified street shares, special rules apply. Nominee holdings can be measured using either of two methods. Method one covers small holdings, in which a 100 percent COR is given, and larger holdings, in which arm's length and non-arm's length tests are applied to the mix of specific holdings to calculate the COR. Method two allows the treatment of each nominee account as a single holding, in which case a composite COR is determined. Unidentified street shares whose beneficial ownership investment dealers cannot identify, are measured according to several criteria, in part to allow for a phased transition into the measurement system. To simplify, however, where the aggregate of unidentified street shares does not exceed 5 percent of that class of shares, the unidentified shares may be excluded from the measurement. Where they exceed 5 percent of the class, the unidentified shares in excess of the 5 percentage points will receive a COR of 0 percent. Until December 31, 1985, however, those shares over 5 points will receive a COR of 50 percent. There is special treatment for each year from 1981 until 1985, on a phased basis. The percentage of unidentified street shares, however, cannot rise beyond the figure reported for 1981.

Petro-Canada

In some cases, there is a still-greater preference for the national hydrocarbon agency, Petro-Canada. For acquisition of oil and gas rights and renewal of permits, Petro-Canada receives treatment preferential to any other corporation.

Drafted: EB/IFD/OIA:PAQuandt:sp
7/22/81:x21717

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Unclassified When Classified
Enclosure(s) is Detached

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JUL 28 1981

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS (CCEA) WORKING GROUP ON INTERNATIONAL INVESTMENT POLICY

FROM: Marc E. Leland, Chairman

SUBJECT: Agency Reports on Possible Problems Arising From Direct Investment in the United States by Foreign Government-Controlled Companies

At the Working Group's first meeting on July 24, the Group agreed that individual papers should be prepared on each of the potential problems arising from direct investment in the United States by foreign government-controlled companies. The Group also agreed on individual agency assignments. The attached list contains the agreed agency assignments. In cases where more than one agency has responsibility for a potential problem, the lead agency has been underlined.

I would appreciate submission of the reports by September 4, so that they can be discussed by the full Working Group and incorporated into a report to the CCEA by the end of September.

As mentioned at the meeting, I would appreciate suggestions for additional questions to be added to the attached list.

Attachment

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Listing of Potential Problems Arising
From Direct Investment in the United States
by Foreign Government Controlled
Companies

Competition Policy

-- Government supported circumventions of U.S. antitrust and unfair trade laws. Justice USTR Commerce

-- Foreign government control over selected United States exports/imports. USTR Commerce

-- Imposition of rigorous "buy national or home country" requirements on United States subsidiary purchases. USTR Commerce

-- Formation of government cartels. Justice

-- Foreign government manipulation of U.S. production. Foreign operators of the U.S. oil and gas leases may have interests that differ from our own i.e., foreign owners from oil-producing countries might shut in production from U.S. leases to maintain markets for their domestically-produced oil. Energy Commerce

-- Foreign government access to information not available to the private business community could give government-controlled firms a distinct advantage. Justice Treasury

-- Foreign government control of shares of non-strategic minerals could lead to supply or price pressures if these minerals are exported to the home country or elsewhere. Interior Commerce

-- Absolute and/or preferential access to capital not available to private firms. For example are nationalized firms really at arms length with national banks. Treasury State

-- High level political intervention and pressure to block or delay Administration of U.S. antitrust and unfair trade laws. USTR State Treasury

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National Security

-- Investment in downstream energy production (refinery operations) may upset Defense security of supply. Defense / Energy

-- Investment in U.S. corporations under contract to produce weapons or equipment for the Department of Defense. Defense

-- Investments in sole-source or few-source suppliers of intermediate or of raw goods to defense industries (strategic minerals). Defense / Interior

-- Flexibility of operations under crisis or sub-crisis environments. Defense

-- Strict control of subsidiary operations (e.g. technology, product development, growth) could have national security implications; particularly industries such as specialized synthetic fuels, chemicals, high technology sectors, minerals extraction and processing. Defense / Commerce / State

-- Extensive control by foreign concerns of U.S. energy service and distribution systems could create special regional security problems, i.e., localized control of gas stations or terminals. Defense / Energy / Commerce

Tax Policy

-- Policy implications if a foreign government seeks to resolve a tax dispute at a high level bypassing normal channels. Treasury

-- Possible difficulty in obtaining books and records of foreign parent. Treasury

-- Negotiation of competent authority settlements in double taxation cases. Treasury

-- Freedom from taxation of dividends in certain circumstances. Treasury

-- Foreign governments have access to information, available under mutual assistance provisions of tax treaties, which include pricing and other economic data concerning the U.S. competitors of the domestic corporation which it controls. Treasury

-- Difficulty in obtaining data for U.S. tax purposes under mutual assistance provision when foreign corporations controlled by foreign government. Treasury

Disclosure

-- There may be difficulty in obtaining information where such information is held by non-controlled affiliates of the foreign investor or by unrelated foreign entities rather than by the entity required to make a pre-merger filing. Such entities may be beyond U.S. jurisdictional reach. Justice SEC

-- Problems in discovery by antitrust suit or actions under foreign corrupt practices act or anti-boycott legislation. Justice

Some other problems of disclosure are given in the tax and competition sections.

Political and Legal

-- Difficulty of United States residents suing foreign government-controlled U.S. subsidiaries. Justice

-- Normal legal action by the U.S. federal or state government may trigger action against U.S. investment abroad. USTR Commer State

-- Linkage of political, diplomatic, or military issues with economic issues relating to foreign government-controlled subsidiaries. Treasu State USTR Commer

--	High level political intervention to influence U.S. legal actions against foreign government owned subsidiary in the U.S.	Treasury State USTR Commerce
--	Possible use of corporate power to influence U.S. policy.	Treasury Commerce

Classified by Frank Vukmanic
☒ Declassify ☐ Review for
Declassification on 7/14/87

Am 1/13/24