Collection: Sprinkel, Beryl: Files
Folder Title: [Foreign Investments]
Box: OA 17740

Foreign Investments

New File

~~SECRET~~

~~SECRET~~

SYSTEM II
90270

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

March 19, 1987

MEMORANDUM FOR

MR. MELVYN LEVITSKY
Executive Secretary
Department of State

MR. ROBERT B. ZOELLICK
Executive Secretary
Department of the Treasury

COL. JAMES F. LEMON
Executive Secretary
Department of Defense

MRS. HELEN ROBBINS
Executive Assistant to the Secretary
Department of Commerce

MR. L. WAYNE ARNY
Association Director for National Security and International
Office of Management and Budget

MR. H. LAWRENCE SANDALL
Executive Secretary
Central Intelligence Agency

MR. JAMES FRIERSON
Chief of Staff
U.S. Trade Representative

DR. BERYL SPRINKEL
Chairman, President's Council of Economic Advisors

MR. JOHNATHAN F. THOMPSON
Executive Assistant to the Director
Office of Science and Technology Policy

DR. JOHN BORIGHT
Division Director
Division of International Programs
National Science Foundation

MR. EUGENE MCALLISTER
Executive Secretary
Economic Policy Council

SUBJECT: Interagency Meeting on a Proposed NSSD on Foreign Investment in Sensitive U.S. Industries ~~(S)~~

Your agency is invited to participate in an interagency meeting, chaired by Stephen Danzansky and Robert Dean of the NSC staff, on Tuesday, March 24, at 3:30 p.m., in the Cordell Hull Conference Room of the Old Executive Office Building, to develop the terms of reference for a National Security Study Directive for the President's consideration which will identify the necessary criteria upon which to evaluate and judge the national security implications of investments in the U.S. resulting from the acquisition of sensitive industries by foreign entities. ~~(S)~~

Please phone the names of your representatives to Pat Battenfield at 395-4985. Attendance will be principal plus one. (U)

Robert Pearson

Grant S. Green, Jr.
Executive Secretary

~~SECRET~~
DECLASSIFY ON: OADR

~~SECRET~~

DECLASSIFIED

dj 8/22/13

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 9, 1983

STATEMENT BY THE PRESIDENT

I am releasing a major statement on international investment. This statement was developed by my Senior Interdepartmental Group on International Economic Policy chaired by Treasury Secretary Regan, and encompasses the views of this Administration on international investment.

The last time such a policy paper was released was in July of 1977 -- more than six years ago. Since then, we have come to view international investment which responds to market forces as a vital and necessary ingredient in a stable, growing world economy.

A world with strong foreign investment flows is the opposite of a zero-sum game. We believe there are only winners, no losers, and all participants gain from it.

International investment flows significantly affect the United States and world economies. With the current environment of widespread international debt problems, foreign direct investment flows take on increased importance. As the preeminent home and host country for foreign direct investment, we have a substantial interest in the conditions under which those flows occur.

The statement I am releasing enunciates the fundamental premise of our policy -- that foreign investment flows which respond to private market forces will lead to more efficient international production and thereby benefit both home and host countries.

It also highlights three other important points. First, our concern with the increasing use of governmental measures to distort or impede international investment flows. Secondly, our strong support for the concept of national treatment which extends to foreign direct investors in the United States. And finally, an enumeration of specific multilateral and bilateral steps the Administration has taken, and will take, to help liberalize international investment flows.

A free and open international investment climate will play a key role, not only in sustaining our own economic recovery here at home, but also in resolving many of the current international debt problems.

more

INTERNATIONAL INVESTMENT POLICY STATEMENT

Executive Summary

International direct investment plays a vital and expanding role in the world economy. To ensure its maximum contribution to both global and domestic economic well-being, the United States believes that international direct investment flows should be determined by private market forces and should receive non-discriminatory treatment consistent with the national treatment principle.

The United States welcomes foreign direct investment that flows according to market forces. The United States accords foreign investors the same fair, equitable, and non-discriminatory treatment it believes all governments should accord foreign direct investment under international law.

The United States opposes continued and increasing government intervention that impedes or distorts investment flows or attempts to shift artificially the benefits of these flows. These measures include trade-related or other performance requirements, fiscal or financial incentives, and discriminatory treatment of foreign investment.

To counter such measures, the United States will pursue an active international investment policy aimed at reducing foreign government actions that impede or distort investment flows, and at developing an international system, based on national treatment and most-favored-nation principles, that permits investment flows to respond more freely to market forces. The United States will work to protect U.S. investment abroad from treatment which is discriminatory or otherwise inconsistent with international law standards. Under international law, no U.S. investment should be expropriated unless the taking is done for a public purpose, is accomplished under due process of law, is non-discriminatory, does not violate previous contractual arrangements, and is accompanied by prompt, adequate, and effective compensation.

In carrying out its international investment policy, in multilateral institutions, the United States will continue to:

-- encourage OECD member governments to adhere to, strengthen and extend OECD investment and capital liberalization instruments;

-- explore ways of extending the principles embodied in the OECD instruments to non-OECD countries;

-- support efforts to increase awareness of the extent and adverse effects of government intervention in order to build a global political consensus to reduce such intervention;

-- work toward increased recognition of intellectual property rights;

more

(OVER)

-- work in the OECD to examine investment problems that affect the service industries, recognizing that for these sectors the opportunity to do business in foreign countries is dependent, in many respects, on the ability to establish foreign operations that are governed by discriminatory investment rules;

-- work in the OECD for a "data pledge" which would assure that no new barriers to data flows will be imposed by developed countries; and encourage all countries to join in adopting more open and liberal policies on transborder flows;

-- work to ensure that any technology transfers which occur are carried out on a sound commercial basis subject to national security and foreign policy considerations;

-- encourage the Multilateral Banks to explore ways to strengthen the private sector role in facilitating financial flows to the developing world;

-- support investor access to third-party arbitration to settle investment disputes.

In its relations with individual countries, the United States will:

-- provide services and assistance to American investors abroad, and offer the full support necessary to ensure that their investments are treated in accordance with standards of international law;

-- seek to ensure that the provisions of U.S. Friendship, Commerce and Navigation treaties and bilateral investment treaties and agreements are fully observed;

-- seek to conclude bilateral investment treaties and agreements with interested countries;

-- explore other appropriate ways to support private direct investment in developing countries;

-- reserve the right to take action against the use of performance requirements and similar policies, consistent with international obligations. The United States will also exercise its rights under existing international agreements.

The United States believes that a combination of multilateral and bilateral efforts will contribute to a more open global climate for investment and thus enhance the prospects for economic growth in the United States and globally.

U.S. GOVERNMENT POLICY ON INTERNATIONAL INVESTMENT

I. Setting

The United States believes that international direct private investment plays a vital and expanding role in the U.S. and world economies. It can act as a catalyst for growth, introduce new technology and management skills, expand employment and improve productivity. Foreign direct investment can be an important source of capital and can stimulate international trade. Both home and host country economies benefit from an open international investment system.

International direct investment can provide particular benefits to developing countries. Foreign investment capital can help to expand the domestic resource base, augmenting locally-generated investment and foreign concessional flows. Foreign direct investment may be of particular value to developing countries in that it contributes to domestic productive capacity without increasing the debt service burden. Further, developing countries may look to foreign direct investment to create new employment opportunities and to provide needed managerial and technical skills that cannot be gained through foreign trade.

Under present circumstances, however, international direct investment is being prevented from making its full contribution to global economic growth. While the current world trade and monetary systems (as embodied in the GATT and the IMF) developed after World War II remain an important foundation for the long-term growth and prosperity of the world economy, there unfortunately exists no comparable system for international direct investment. There has been inadequate collective restraint on widespread and distortive interventions by both developed and developing governments, attempting to control the flow of foreign direct investment and the benefits associated with it. While the effects of intervention are difficult to quantify, the impact can be negative for home, host, and third countries because intervention distorts international investment and trade flows, thereby preventing the most efficient allocation of resources.

Useful attempts have been made to address this problem, particularly in the OECD, but progress has been slow. The inability to arrive at an international consensus on these issues has created pressures in many countries, including the United States, to abandon more traditional economic policies based on market forces and to move toward still greater government intervention.

In light of these developments, it is important that there be a clear understanding both at home and abroad of U.S. policies with respect to international direct investment issues and how the United States intends to implement these policies.

more

(OVER)

II. U.S. Policy Precepts

The United States believes that an open international investment system responding to market forces provides the best and most efficient mechanism to promote global economic development. Government intervention in the international allocation of investment resources can retard economic growth.

The United States has consistently welcomed foreign direct investment in this country. Such investment provides substantial benefits to the United States. Therefore, the United States fosters a domestic economic climate which is conducive to investment. We provide foreign investors fair, equitable, and non-discriminatory treatment under our laws and regulations. We maintain exceptions to such treatment only as are necessary to protect our security and related interests and which are consistent with our international legal obligations.

The United States believes that U.S. direct investment abroad should also receive fair, equitable and non-discriminatory treatment, consistent with international law standards. The basic tenet for treatment of investment is the national treatment principle: foreign investors should be treated no less favorably than domestic investors in like situations. Exceptions should be limited to those required to protect national security and related interests. In these cases, foreign direct investment should be accorded treatment consistent with the most-favored-nation principle.

The United States opposes the use of government practices which distort, restrict, or place unreasonable burdens on direct investment. These include such measures as trade-related or other performance requirements (such as local content, minimum export, and local equity requirements), fiscal or financial incentives. Interference with the market mechanism can cause serious distortions in trade and investment flows, encourage the retaliatory use of similar measures by other governments, and precipitate a downward spiral in global investment flows. The United States intends to continue its efforts to reduce or eliminate measures that restrict, distort, or place undue burdens on international direct investment flows. In this regard, the United States will make a particular effort to prevent the introduction by other countries of new measures of this type. Moreover, the United States will continue to attempt to deal with this issue on a multilateral basis, although non-multilateral approaches may be appropriate on a case-by-case basis.

The United States will continue to work for the reduction or elimination of unreasonable and discriminatory barriers to entry of investment. The United States believes that foreign investors should be able to make the same kinds of investment, under the same conditions, as nationals of the host country. Exceptions should be limited to areas of legitimate national security concern or related interests. Because establishment questions are not adequately covered in existing multilateral instruments relating to investment, the United States will encourage broader exploration, identification and discussion of these issues in the OECD and elsewhere.

The United States is particularly concerned with foreign investment rules that prohibit service industries from doing business abroad. Service sectors are among the most dynamic in today's economy, but there exists a number of limitations that inhibit export opportunities. For many service sectors, there is a universal requirement of establishment in host countries, with the competitive success of these industries heavily dependent upon the presence of branches to meet peculiar regulatory requirements. Thus, the investment policies of foreign countries have special importance to the service sectors.

The United States recognizes that international direct investment frequently serves as a vehicle for transfer of technology and can benefit the economic development goals of both home and host countries. Technology transfers should be carried out on a sound commercial basis, subject to national security and foreign policy considerations.

The United States places high priority on the protection of U.S. investment abroad from discriminatory treatment, or treatment which is inconsistent with international law standards. Under international law, no U.S. investment should be expropriated unless the taking (a) is done for a public purpose; (b) is accomplished under due process of law; (c) is non-discriminatory; (d) does not violate any previous contractual arrangements between the national or company concerned and the government making the expropriation; (e) is accompanied by prompt, adequate and effective compensation.

III. General U.S. Objectives

The United States accords foreign investors open access to investment opportunities. What we seek is similar access for United States investors abroad. A major objective of our international investment policy is acceptance of the national treatment principle.

In addition, the United States seeks to:

-- strengthen multilateral and bilateral discipline over government actions which affect investment decisions, such as incentives and performance requirements, particularly when such actions distort international trade and investment flows;

-- reduce unreasonable and discriminatory barriers to establishment;

-- create, through cooperation among developed and developing nations, an international environment in which direct investment can make a greater contribution to the development process;

-- foster a domestic economic climate in the United States which is conducive to investment, ensure that foreign investors receive fair and equitable treatment under our statutes and regulations, and maintain only those safeguards on foreign investment which are necessary to protect our security and related interests and which are consistent with our international legal obligations.

IV. Multilateral

The United States will:

-- continue to adhere to the OECD Investment Declaration and related Decisions on national treatment, international investment incentives and disincentives, and Guidelines for Multinational Enterprises as adopted in 1976 and reviewed in 1979. We also adhere to the OECD Code of Liberalization of Capital Movements, adopted in 1961, and support its expansion;

-- encourage OECD governments to abide by the OECD investment and capital liberalization instruments, and to strengthen and extend these instruments through broader extension of the principle of national treatment and the right of establishment;

-- explore ways of extending the principles embodied in the OECD instruments to non-OECD countries. To increase the effectiveness of these instruments on a global basis, the developing countries, and in particular the newly-industrialized countries, need to be brought into any multilateral understanding on investment;

-- support efforts to increase awareness of the extent and adverse effects that government intervention, e.g., through performance requirements, can have on the U.S. and world economies. This is essential in order to reduce the predatory use of such measures, and especially to limit the introduction of new measures and the expansion of existing measures. The United States will encourage and actively participate in continued work in multilateral institutions to address these questions;

-- encourage adherence by all countries to the Paris Convention for the Protection of Industrial Property, and enactment of effective industrial property laws, guaranteeing recognition of patent, copyright, and other industrial property rights. These are essential for the flow of foreign direct investment into both developed and developing countries. The lack of adequate property rights is a major disincentive to investment in manufacturing facilities and research and development, and to the transfer of technologies. The Paris Convention for Industrial Property Protection is currently undergoing revision under the auspices of the World Intellectual Property Organization. The United States will support continued efforts aimed at improving protection of industrial property rights, fight to maintain current protection levels where they are adequate and to upgrade protection where it is inadequate, and work to ensure that such principles are upheld in negotiations of codes relating to transfer of technology and transnational corporations which are now underway in the U.N.;

more

-- continue to work in the OECD for a "data pledge" which would assure that no new barriers to data flows will be imposed by developed countries; and encourage all countries to join in adopting more open and liberal policies on transborder data flows;

-- encourage adherence to the Code of Capital Movements and support its expansion;

-- support the Multilateral Development Banks in their efforts to foster more rapid economic growth in the developing countries. The United States will continue to encourage the Banks to explore ways to develop new programs to strengthen the private sector role in financial flows to the developing world;

-- support investor access to third-party arbitration to settle investment disputes, such as the facilities of the World Bank's International Centre for the Settlement of Investment Disputes. The United States believes that governments should effectively support investor access by adherence to the Convention of the Settlement of Investment Disputes between States and Nationals of Other States or the Inter-American Convention on International Commercial Arbitration, and by evidencing their commitment to be bound by third-country arbitral awards by adhering to the Convention of the Recognition and Enforcement of Foreign Arbitral Awards.

V. In its bilateral relations, the United States:

-- in cases of expropriation or nationalization of American investment abroad, will provide full support for American investors to ensure that standards of international law are honored by host governments;

-- will provide appropriate facilitative services to assist American investors overseas and, in particular, will assist them in obtaining information on the host country investment climate, economic objectives, and investment opportunities;

-- will work to ensure that the relevant provisions of our Friendship, Commerce and Navigation treaties are fully observed;

-- as a means to facilitate and protect American investment, will seek to conclude bilateral investment treaties and agreements with interested countries. The treaties will contain appropriate provisions on, <u>inter alia</u>, treatment of existing and new investment (including national treatment and most-favored-nation treatment); transfers; dispute settlement; use of performance requirements; and compensation in the event of expropriation;

more

(OVER)

-- will explore, through our bilateral economic assistance programs with developing countries, appropriate ways to increase non-official flows, and will seek to ensure that these programs effectively support private direct investment;

-- reserves the right to take unilateral action against the use of performance requirements and similar policies, consistent with our international obligations. The United States is now exercising and will continue to exercise its rights under existing international arrangements, including the GATT and OECD.

The United States believes that a combination of multilateral and bilateral efforts will contribute to the achievement of a more open global climate for investment, and thus enhance the prospects for economic growth in the United States and globally.

# # # # # # #