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■

FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

Final Survey Regulations

Title 15—Commerce and Foreign Trade
CHAPTER VIII—BUREAU OF ECONOMIC ANALYSIS, DEPARTMENT OF COMMERCE

PART 804—FOREIGN DIRECT INVESTMENT IN THE UNITED STATES SURVEY REGULATIONS

Final Survey Regulations

Notice is hereby given of the promulgation in final form by the Department of Commerce of a new Part 804 of Title 15 of the Code of Federal Regulations to include the regulations concerning the Survey of Foreign Direct Investment in the United States, to be conducted as a part of the study required to be carried out by the Department of Commerce pursuant to the Foreign Investment Study Act of 1974 (Pub. L. 93-479).

On November 5, 1974, and November 27, 1972, notices of proposed rulemaking regarding these regulations were published in the FEDERAL REGISTER (39 FR 39076 and 39 FR 41382). The public was given the opportunity to submit in writing comments, data, views, arguments, or suggestions pertaining to the proposed survey regulations prior to their publication in final form. A number of public comments were received in response to the notices mentioned above. A public hearing on the proposed survey regulations was also held by the Office of Management and Budget on December 3, 1974, to receive comments on the survey form from interested parties pursuant to its authority under the Federal Reports Act (44 U.S.C. 3501). All suggestions and comments received pursuant to the above-mentioned notices and the Office of Management and Budget hearing have been carefully considered and taken into account in the final survey regulations published herein.

The changes resulting from public suggestions and comments in these final survey regulations are mainly of a clarifying nature. The final survey regulations published hereunder are promulgated under the authority of the Foreign Investment Study Act of 1974 ("The Act") which directs the Secretary of Commerce, among other matters, to:

- (1) Investigate and review the nature, scope, magnitude, and rate of foreign direct investment activities in the United States;
- (2) Survey the reasons foreign firms are undertaking direct investment in the United States;
- (3) Identify the processes and mechanisms through which foreign direct investment flows into the United States, the financing methods used by foreign direct investors, and the effects of such financing on American financial markets;
- (4) Analyze the scope and significance of foreign direct investment in acquisitions and takeovers of existing American enterprises, the significance of such investments in the form of new facilities or joint ventures with American firms, and the effects thereof on domestic business competition;
- (5) Analyze the concentration and distribution of foreign direct investment in specific geographic areas and economic sectors;
- (6) Analyze the effects of foreign direct investment on United States national security, energy, natural resources, agriculture,

environment, real property holdings, balance of payments, balance of trade, the United States international economic position, and various significant American product markets;

(7) Analyze the effect of foreign direct investment in terms of employment opportunities and practices and the activities and influence of foreign and American management executives employed by foreign firms;

(8) Analyze the effect of Federal, regional, state, and local laws, rules, regulations, controls, and policies on foreign direct investment activities in the United States;

(9) Compare the purpose and effect of United States, state and local laws, rules, regulations, programs, and policies on foreign direct investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

(10) Compare and contrast the foreign direct investment activities in the United States with the investment activities of American investors abroad and appraise the impact of such American activities abroad on the investment activities and policies of foreign firms in the United States; and

(11) Study the adequacy of information, disclosure, and reporting requirements and procedures;

(12) Determine the effects of variations between accounting, financial reporting, and other business practices of American and foreign investors on foreign investment activities in the United States; and

(13) Study and recommend means whereby information and statistics on foreign direct investment activities can be kept current.

These regulations define foreign direct investment in the United States for purposes of the Act, set forth reporting and recordkeeping requirements pertaining to this survey, outline confidentiality provisions applicable to reports and analysts studying the reports, describe the reporting form to be used and where such form can be obtained, and specify penalties for violation of the regulations.

The Act authorizes the Secretary, pursuant to section 7(a), to issue such rules as he deems necessary to carry out his functions under the Act. Rules, in addition to those for this Survey of Foreign Direct Investment in the United States, may be proposed at a later date if necessary to enable the Secretary to carry out other functions under the Act.

The final regulations for the Survey of Foreign Direct Investment in the United States are as follows:

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Subpart A—Definitions

§ 804.1 Person.

The term "person" means an individual, a government, a corporation, a branch, a partnership, an associated group, an affiliated foreign group, a joint stock company, a trust, an estate, or other unincorporated organization.

§ 804.2 Associated group.

The term "associated group" means two or more foreign persons who, by the appearance of their actions, by agreement, or by an understanding, exercise their voting privileges in a concerted manner to influence the management of a U.S. business enterprise. The following are deemed to be associated groups:

- a. Members of the same family.
- b. A foreign business enterprise and one or more of its officers or directors.
- c. Members of a syndicate or joint venture.
- d. Foreign owners of a U.S. business enterprise whose interests in the enterprise are held or managed by a U.S. or a foreign trust.

§ 804.3 Affiliated foreign group.

The term "affiliated foreign group" means a primary foreign person (that foreign person which is not owned to the extent of more than 50 percent of its voting rights by another foreign person) and all of its majority-owned non-U.S. business enterprises.

§ 804.4 Business enterprise.

The term "business enterprise" means any organization, branch, or venture which exists for profit-making purposes, and any real estate which is owned.

§ 804.5 Branch.

Branch shall include—
 (a) The operations or activities conducted by an incorporated or unincorporated person in its own name in a different location, but not through an incorporated entity.

(b) The U.S. business of foreign mutual insurance companies.

§ 804.6 Control or controlling interest.

The term "control or controlling interest" means for the purposes of this survey, the direct and/or indirect ownership through intermediaries or affiliates of 10 percent or more of the voting securities of an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise.

§ 804.7 Reporter.

The term "reporter" means the U.S. business enterprise required to file a report in this survey, or for which a report is required to be filed.

§ 804.8 U.S. affiliate.

The term "U.S. affiliate" means a U.S. business enterprise owned directly or indirectly by a foreign person to the extent of 10 percent or more of its voting securities for an incorporated business enterprise, or an equivalent interest for an unincorporated business enterprise.

§ 804.9 Parent.

Parent refers to:

(a) The foreign person (including an individual business enterprise which is a member of an affiliated foreign group) holding a direct ownership interest in a U.S. affiliate of that foreign person.

(b) A U.S. affiliate, of a foreign person, which holds a direct ownership interest in another U.S. affiliate of that same foreign person.

§ 804.10 Foreign parent.

"Foreign parent" refers to a foreign person (including an individual business enterprise which is a member of an affiliated foreign group) holding a direct or indirect ownership interest in a U.S. affiliate of that foreign person.

§ 804.11 Foreign affiliate of foreign parent.

With reference to a given U.S. affiliate, a "foreign affiliate of foreign parent" is any individual foreign business enterprise which is a member of an affiliated foreign group owning a given U.S. affiliate, but which does not have a direct ownership interest in that U.S. affiliate.

§ 804.12 United States.

"United States" shall refer to the 50 states of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the Panama Canal Zone; the U.S. Virgin Islands; Guam; American Samoa; and all other territories and possessions of the United States.

§ 804.13 Foreign.

The term "foreign" means that which is situated outside the United States; belonging to, characteristic of, or under the jurisdiction of a country or political entity other than the United States.

§ 804.14 The Act.

For the purposes of this part, "the Act" means the Foreign Investment Study Act of 1974 (Pub. L. 93-479, 88 Stat. 1450).

§ 804.15 The Secretary.

The term "the Secretary" means the Secretary of Commerce.

Subpart B—Recordkeeping and Reporting Requirements

§ 804.16 Determination by the Secretary.

The Secretary hereby determines that the recordkeeping and reporting provisions of this subpart are necessary to enable him to carry out his functions under the Act.

§ 804.17 Reports.

(a) *Basic requirement.* Every business enterprise subject to the jurisdiction of the United States, which was controlled

directly or indirectly by a foreign person at any time during the year ending December 31, 1974, is required to report.

1. Reports are required even though the U.S. business enterprise may have been established, liquidated, sold to U.S. persons, or destroyed during the reporting period.

2. If the U.S. business enterprise is in the nature of real property not identifiable by name, the report must be filed in the name of the foreign beneficial owner, or in the name of such foreign beneficial owner by the agent or representative of such owner.

(b) *Intermediary of a foreign beneficial owner.* 1. If the foreign controlling interest in a U.S. business enterprise, including real estate, was held, exercised, administered, or managed by a U.S. estate, trust, nominee, agent, manager, custodian, or other intermediary of the foreign beneficial owner such estate, trust, nominee, agent, manager, custodian, or other intermediary shall be responsible for reporting the required information for the U.S. business enterprise, and shall report on behalf of the U.S. business enterprise or shall instruct the U.S. business enterprise in question to submit the required information. Upon so instructing the U.S. business enterprise, the intermediary shall be released from further liability provided he has informed the Department of Commerce of the date such instructions were given, the name and address of the U.S. business enterprise, and has supplied the U.S. business enterprise with any information in the possession of the intermediary which is necessary to permit the U.S. business enterprise to complete the form. A foreign person who establishes a trust shall be considered a foreign parent of that U.S. business enterprise.

2. For the purposes of this survey, when the report is filed by the U.S. intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the U.S. business enterprise with the foreign beneficial owner.

§ 804.18 Exemptions and exclusions.

(a) Property held exclusively for personal use, and not for profit-making purposes, is exempt for purposes of this survey. For example, hunting lodges, homes, and automobiles for personal use are exempt. However, foreign ownership of real estate in the United States for business must be reported, except as otherwise exempted by this section.

(b) A report need not be filed for ownership in a U.S. business enterprise held by persons who are:

(1) Citizens of a foreign country who have resided in the United States for one year or more, except those who are officers or employees of the government of their country of citizenship and members of the immediate family of such individuals provided they are citizens of the foreign country.

(2) U.S. citizens who are residents of foreign countries and who are officers or employees of the U.S. Government

and members of the immediate families of such individuals provided they are citizens of the United States.

(3) U.S. citizens who are resident outside of the United States for less than one year.

(c) U.S. religious bodies, charitable organizations, and other nonprofit organizations are not business enterprises and, therefore, foreign ownership of these types of U.S. organizations is not reportable.

(d) Partial exemption based on value—if the value of both total assets, including real property investment, and total revenues of any U.S. affiliate otherwise required to report, were each less than \$100,000 on December 31, 1974, such U.S. affiliate is required to file only PART I of Form BE-12 for this survey, with a notation in item 20 of PART I, that both total assets and total revenues are less than \$100,000. The value of total assets is to be based on gross book value, as shown on the books of the U.S. business enterprise.

§ 804.19 Records.

(a) Every person subject to the provisions of this part and to the jurisdiction of the United States, whether or not such person is exempt from reporting requirements of this part, shall maintain a complete and accurate record of any information which is germane to transactions covered by the Survey of Foreign Direct Investment in the United States being conducted under this part, or which is germane to any other functions in the study being conducted under this Act as the Secretary may otherwise determine.

(b) Such records (including but not limited to journals, other books of original entry, minute books, stock transfer records, lists of shareholders, financial statements, and worksheets) shall be maintained for a period of two years after the due date for the filing of the survey report provided in paragraph 804.21(h).

(c) Every person required to keep records under this part shall produce all records or reproductions thereof and make them available to inspection and copying upon request by any sworn employee designated by the Secretary, without any charge or expense to the Government.

§ 804.20 Protection of information.

(a) *Confidentiality.* In addition to the Secretary, the only individuals who may have access to information furnished under the provisions of this part are those sworn employees, including consultants, of the Department of Commerce designated by the Secretary. Neither the Secretary nor any such employee may:

(1) Use any information furnished under this part except for analytical or statistical purposes within the United States Government; or

(2) Publish, or make available to any other person in any manner, any such information in a manner whereby the information furnished by any person un-

der this part can be specifically identified, except for purposes of an enforcement proceeding under the Act; *Provided*, That the Secretary or his designated sworn employees may exchange information furnished under the provisions of this part with the Secretary of the Treasury or his designated sworn employees on order to prevent any duplication or omission in the studies conducted by each Secretary pursuant to the Act.

(b) *Notification of customers.* Whenever a person is required to submit any report pursuant to this part which contains information which can be specifically identified as being part of the records of its customers, where such person is not directly involved in the ownership or management of assets for the customers as a nominee, agent, partner, fiduciary, trustee, or in a similar relationship, the Secretary, upon being provided the names and addresses of such customers, shall send a notice to customers, that information from their records will be disclosed pursuant to the Act. Any persons having submitted names of customers pursuant to the provisions of this paragraph shall be required to submit a report on its due date or within 10 days of being notified by the Secretary that notice to such customers has been given, whichever is later.

§ 804.21 Miscellaneous.

(a) *Accounting records to be used.* In supplying the information required in this survey, data for corporations should be derived from the records used to generate reports to stockholders. Reports for unincorporated persons should be derived from equivalent records.

(b) *Reporting period.* Reports should be submitted on a calendar year basis for the year ending December 31, 1974. If this necessitates the estimation of annual data based upon quarterly or monthly reports in order to present the data on a calendar year basis, or closer to a calendar year basis, such estimates are acceptable. Where a company is not on a calendar year basis, a report may be submitted covering a year ending between November 16, 1974 and February 15, 1975, the actual date coinciding with the actual ending date of a fiscal year or a fiscal quarter within that period, provided that the equity relationships and intercompany balances between reporter and parent do NOT materially differ from those existing on December 31, 1974.

(c) *Annual stockholder's report.* Reporters are requested to submit, along with their completed Form BE-12, a copy of their annual report to stockholders.

(d) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every question on each form should be answered, except where reporters are specifically exempt from reporting certain parts or items on the forms. Where only partial information is available, an appropriate indication should be given.

(e) *Estimates.* If actual figures are not available, estimates shall be supplied. When data items requiring detailed breakdowns cannot be fully subdivided, totals should be supplied and an estimated percentage breakdown should also be supplied.

(f) *Specify.* Certain data lines require that reporters "Specify" items included in the total for such lines. In all such cases, the Reporter should give the type and dollar amount of the items included in the line.

(g) *Space on form insufficient.* When space is insufficient to permit a full answer to any item on the form, the information required should be submitted on supplementary sheets appropriately labeled and referenced to the item and the form.

(h) *Filing date.* Reports shall be filed on or before April 30, 1975, or no later than 60 days after publication of final rules and regulations in the FEDERAL REGISTER, whichever date is later.

(i) *Extensions.* Requests for an extension will NOT normally be granted; however, in hardship cases written requests for an extension will be considered provided they are received 15 days prior to the due date and enumerate substantive reasons necessitating the extension.

(j) *Assistance.* If there are any questions concerning the report, telephone (202) 523-0547.

(k) *Number of copies.* A single original copy shall be filed with the Bureau of Economic Analysis. In addition, each reporter should retain a copy of this report for his files.

(l) *Where to send reports.* All reports shall be sent to the Bureau of Economic Analysis, Attention: International Investment Division, BE-50 (LM), U.S. Department of Commerce, Washington, D.C. 20230.

(m) *Treasury Department's Foreign Portfolio Investment Study.* The Department of the Treasury is concurrently conducting a survey of foreign portfolio investment in the United States for the year 1974. All U.S. business enterprises owned to the extent of less than 10 percent by a foreign person and not required to report in this survey of foreign direct investment, should contact the Department of the Treasury concerning reporting requirements for the portfolio survey.

Subpart C—Description of Forms Prescribed Under This Part

§ 804.22 Copies.

Copies of the forms described in this subpart may be obtained from the Bureau of Economic Analysis, Attention: International Investment Division, BE-50 (LM), U.S. Department of Commerce, Washington, D.C. 20230.

§ 804.23 Form BE-12.

On Form BE-12, each U.S. business enterprise which was controlled directly or indirectly by a foreign person at any time during the year ending December

31, 1974, is required to report information on investment and transactions between the U.S. business enterprise and its parent(s); information on direct financial transactions between the U.S. business enterprise and all foreign affiliates of all foreign parents which did not have a direct line of ownership in the U.S. business enterprise any time during the year ending December 31, 1974; various financial schedules covering the year ending December 31, 1974; information on merchandise trade of the U.S. business enterprise with foreigners; information, by state, on employment, revenues, operating assets, and land owned; and other information concerning the operations of the U.S. business enterprise and its relationship with the foreign person(s) having the controlling interest in the U.S. business enterprise.

Subpart D—Penalties

§ 804.24 Civil and criminal penalties.

In accordance with section 8 of the Act, the penalties and enforcement procedures described in paragraphs (a), (b) and (c) of this section shall apply to violations of this part and any reporting requirement imposed hereunder, or any other rule, regulation, order or instruction promulgated by the Secretary under the authority of the Act.

(a) *Civil penalty.* Attention is directed to section 8(a) of the Act which provides:

Whoever fails to furnish any information required pursuant to the authority of this Act, whether required to be furnished in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act may be assessed a civil penalty not exceeding \$10,000 in a proceeding brought under subsection (b) of this section.

(b) *Civil proceeding; injunction.* Attention is directed to section 8(b) of the Act which provides:

Whenever it appears to either the Secretary of the Treasury or the Secretary of Commerce that any person has failed to furnish any information required pursuant to the provisions of this Act, whether required to be furnished in the form of a report or otherwise, or has failed to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act, the Secretary may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, seeking a mandatory injunction commanding such person to comply with such rule, regulation, order, or instruction, and upon a proper showing by the Secretary of the relevance to the purposes of the Act of such rule, regulation, order, or instruction, a permanent or temporary injunction or restraining order shall be granted without bond, and such person shall also be subject to the civil penalty provided in subsection (a) of this section if the judge finds that such penalty is necessary to obtain compliance with such injunction or restraining order.

(c) *Criminal penalties.* Attention is directed to section 8(c) of the Act which provides:

Whoever wilfully fails to submit any information required pursuant to this Act, whether required to be furnished in the form of a report or otherwise, or wilfully violates any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act shall, upon conviction, be fined not more than \$10,000 or, if a natural person, may be imprisoned for not more than one year or both; and any officer, director, or agent of any corporation who knowingly par-

ticipates in such violation may be punished by a like fine, imprisonment, or both.

§ 804.25 False statements generally.

Attention is also directed to section 1001 of Title 18, United States Code, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals, or covers up by any trick,

scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

FREDERICK B. DENT,
Secretary of Commerce.

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