

RG 131
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DECLASSIFIED
 Authority NND 968103
 By W511 NARA Date 1/4/00

MAY 25 1948

Dear Mr. Burgess:

I have your letter of May 5 and have again reviewed both your original suggestion and our own program for dealing with the assets still blocked under Foreign Funds Control.

Our program is designed to accomplish two purposes: (1) to complete by September 1, 1948, the process of certification by the appropriate foreign governments that there is no enemy interest in the assets for which unblocking is requested; and (2) to assist the countries which are to receive aid under the European Recovery Program to mobilize the dollar assets of their citizens. In operation, the two purposes are of course closely linked since the certification procedure does mean that the person desiring unblocking of assets must reveal them to the appropriate government. The precise means of carrying out the certification procedure on the part of the foreign countries involved may vary from country to country since this Government has never undertaken to prescribe the exact methods which a foreign government should adopt in fulfilling its commitments with respect to the procedure. As you are doubtless aware, the French Minister of Finance recently announced an arrangement which the French Government felt would tend to preserve the anonymity of French property owners as far as was consistent with the purposes of the certification procedure. This Government perceived no objection to the arrangement since it was assured that the purposes referred to above, including that of detecting enemy interests, would be fully carried out.

However, it is basically true that our program does contemplate that the blocked assets of citizens of the countries receiving aid under the European Recovery Program will be made known to the governments of the proper countries on their request and eventually will be available as a resource in connection with European Recovery. In considering the arrangements which the National Advisory Council

MAY 25 1948 - Mailed
 CC: Arnold Lynch-Powell (3)

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has proposed for dealing with this problem we gave careful attention to both the legal and the practical factors. While both have been restudied carefully in the light of your observations, I still believe that the arrangements we have advanced are the most satisfactory which have been proposed, taking into account all the extremely complicated circumstances.

Sincerely yours,

(Signed) JOHN W. SNYDER

Secretary of the Treasury

Mr. W. Randolph Burgess
55 Wall Street
New York 15, New York

EArnold:VJ
5-21-48
Classified with
Rd & CA.
CA. [Signature] JM

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By <u>W511</u>	NARA Date <u>1/4/00</u>

MAY 27 1948

My dear Senator:

It is regretted that through a misunderstanding an answer to your letter of April 2, 1948 has been so long delayed.

Your interest in the government's program to assist countries, receiving aid under the European Recovery Program, in locating for control the blocked dollar assets of their resident citizens, is greatly appreciated. You may be assured that we are proceeding with every caution in the administration of this program. As was indicated in the Secretary's letter to you of March 29, 1948, the program does not contemplate the seizure of private property in the United States for the use of the United States Government and therefore should not constitute a precedent for foreign governments to seize the property of United States citizens within their borders. To the extent that under this program some private foreign property might be vested by the United States for future disposition, such property will be that of owners who elected to forfeit it to this government. Such owners have had and will continue to have the opportunity to secure the unblocking of their property in accordance with administrative procedures.

Sincerely yours,

(Signed) Frank A. Southard, Jr.

Frank A. Southard, Jr.
 Director, Office of International Finance

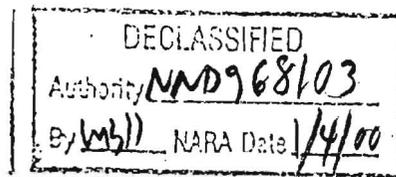
Honorable Raymond E. Baldwin
 United States Senate
 Room 354, Senate Office Bldg.
 Washington, D. C.

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 cc - *Conner files*

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COPY

110051

June 2, 1948

Dear Mr. Valensi:

This is with reference to the unblocking procedures which will be available to your residents until September 1, 1948 if they have failed to file applications for certification under General License No. 95 before June 1, 1948.

Resident citizens of France who after June 1, 1948 and before September 1, 1948 desire to secure the unblocking of their assets in the United States which may be held directly or indirectly should be advised to apply directly to the Treasury Department through the Federal Reserve Bank of New York. The unblocking license will be issued provided your government advises the Treasury Department in writing that the applicant is the beneficial owner of the property and that there is no enemy interest in such property, and the application is otherwise satisfactory. It is expected that your government will not issue such a statement in circumstances other than those in which it would have been appropriate for the Office des Changes to have issued a certification if application for certification had been made prior to June 1, 1948. To expedite the procedure you may advise any applicant that he may request from your government the statements respecting non-enemy interest and beneficial ownership prior to submitting his application. Such statement, if issued, should thereafter be attached to the application when it is submitted to the Federal Reserve Bank of New York. You may be assured that we will take expeditious action on all such applications.

Non-citizens of France resident in that country who may inquire after June 1, 1948 respecting the manner in which they may secure the unblocking of their assets should be advised to apply to the Treasury Department through the Federal Reserve Bank of New York which will shortly be in a position to advise applicants of the exact requirements.

Sincerely yours,

(signed) Rella R. Shwartz

Rella R. Shwartz
Acting Director

Mr. Christian Valensi,
 Financial Counselor,
 Embassy of the French Republic,
 Washington, D. C.

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By <u>W511</u>	NARA Date <u>1/4/00</u>

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In reply refer to
 L/S

June 29, 1948

My dear Mr. Attorney General:

I refer to the arrangements which I understand have been made for the transfer of jurisdiction with respect to property which is owned by foreign nationals and is located in the United States and is subject to the blocking controls which have until now been administered by the Foreign Funds Control of the Treasury Department.

It is my understanding that the Treasury Department will transfer jurisdiction with respect to these properties to the Department of Justice on September 1, 1948 and that after that date the controls will be administered by the Office of Alien Property of the Department of Justice.

It has been the understanding of this Department that the transfer of functions in question was to take place chiefly for the reasons outlined in Secretary Snyder's letter of February 2, 1948 to Senator Vandenberg. The transfer is thus in aid of this Government's objectives under the European Recovery Program. Certain of the assets in question, however, are not relevant to the objectives of the European Recovery Program. The transfer of administrative responsibility with respect to these is understood to be a matter of convenience, reflecting no change in basic policies. In this connection I refer particularly to assets in the United States blocked in the names of the governments or nationals of the so-called satellite countries - Bulgaria, Rumania, Hungary, and Yugoslavia - or of the Baltic States of Estonia, Lithuania and Latvia. The Department feels it to be of the highest importance that the administrative changes involved in the transfer of functions to the Department of Justice should involve no alteration in the policies applicable to the assets of the nationals of these named countries, or to assets standing in the names of the governments of these countries or of their governmental or central banking institutions.

Certain licenses

The Honorable
 Tom Clark,
 Attorney General.

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 - 3 -

Certain licenses are outstanding which permit the diplomatic representatives in the United States of Estonia, Lithuania and Latvia to draw upon the accounts of these countries in the United States. It is not understood that any change in the policy reflected in these licenses of permitting such withdrawals is contemplated, but, for reasons which you will understand, the Department would appreciate your indication that no change in this policy is intended after the transfer date of September 1, 1948.

It is understood that the disposition of that small part of the assets in the United States of Czechoslovakia, Poland and Finland and of their nationals, which are still blocked, is at present under discussion between the Departments of State, Treasury and Justice.

Of great importance to the Department in the conduct of foreign policy is the control which is exercised by this government over the funds in the United States of the satellite countries and their nationals. The reasons which have impelled the continued blocking of these funds are, to a considerable extent, reasons of foreign policy; and both the continued blocking, for the present at least, of these assets and the ability of the Department of State to work out overall arrangements with these countries which may involve the release of the blocking controls are of vital importance in the conduct of United States relations with these countries. It has, therefore, from the outset been assumed by the Department that such overall arrangements as might be worked out between the United States and the satellite countries, as, for example, in the negotiations which are presently under way with the Government of Yugoslavia, would be implemented by such agencies of this Government as might administer the controls over these foreign assets. It would be greatly appreciated if you could confirm this understanding with respect to the situation which will exist after September 1, 1948.

The cooperation between the Department of State, Department of Justice and the Treasury Department which has marked the administration of the controls exercised by the United States under the Trading with the Enemy Act, as amended, has been outstanding. I have every confidence that this mutual assistance and cooperation will continue and be strengthened. In no way, therefore, should this letter be construed as indicating any lack of confidence that the working arrangements between our Departments, which have in the past been highly satisfactory, would not continue in the future. Rather, the confirmation of my understanding on these matters is requested in order to provide a basis for allaying any possible doubts with respect

to the effect

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to the effect of the transfer of jurisdiction which is contemplated and to provide the basis for answers to the inquiries which may be addressed to this Department in the future on matters which are of direct concern to the conduct of foreign relations with respect to the countries which have been mentioned.

A copy of this letter is being sent to the Secretary of the Treasury.

Sincerely yours,

ROBERT A. LOVETT

Under Secretary

10-10-50

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GENERAL INVESTIGATIVE DIVISION

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LRB:MW:11

Henry G. Hilken, Chief
 Operations Branch
 Leon R. Brooks, Chief
 Foreign Funds Section
 Future Program with respect
 to Blocked Property

February 11, 1949

The purpose of this memorandum is to set forth a program which, in my opinion, should be adopted with respect to assets which are still blocked under Executive Order 8389, as amended. The blocked countries will be divided into four groups and a program will be recommended for each group.

I. Recipient Countries, Switzerland
 and Liechtenstein

The Department of Justice Press Release of September 29, 1948, announcing the transfer of jurisdiction over blocked property from the Treasury Department to the Department of Justice, pursuant to Executive Order 9889, stated that such transfer was "a further step in the orderly liquidation of war-time controls over blocked property in the shortest possible time compatible with the policy of eliminating enemy interests in our economy, and in the program of assisting, as far as possible, in the successful recovery of the foreign countries participating in the European Recovery Program by aiding them to marshal the United States assets of their nationals".

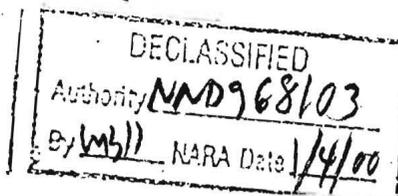
The Press Release also pointed out that "the reasons for the transfer and the governmental policy with respect to the further administration and disposition of blocked assets have been stated in detail in a letter from Secretary of the Treasury John W. Snyder to Senator Arthur H. Vandenberg, Chairman of the Senate Foreign Affairs Committee, dated February 2, 1948, which was made public at that time".

The Snyder letter set forth a program to be carried out by the Department of Justice with respect to (a) directly held blocked assets of citizen residents of recipient countries and (b) blocked assets in Swiss and Liechtenstein accounts and assets held indirectly through recipient countries. Part (a) of this program is currently being carried out. No plans, however, have yet been made with respect to implementing Part (b) which sets forth the following measures to be taken by this Office:

"To deal with indirectly-held assets by a vesting program with respect to accounts which remain uncertified after the deadline date. Processing of uncertified assets in Swiss and Liechtenstein accounts for vesting under applicable law as enemy property will be started immediately after the receipt of the census information by the Office of Alien Property. The vesting program will also be applied to uncertified assets held indirectly through recipient countries where the program described in (a) above does not result in disclosure to the beneficial

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owner's government (e.g., French assets held through the Netherlands). In the absence of definite evidence of non-enemy ownership, full weight will be given to the presumption of enemy ownership arising from the failure to obtain certification. Evidence of non-enemy ownership or interest offered either before or after vesting will be checked in accordance with the usual investigative procedures of the Office of Alien Property. These procedures involve disclosure to the governments of the countries of which persons claiming legal or beneficial interests are residents. Of course, any vested assets which are proved to be non-enemy may be returned under existing law applicable to the return of vested property."

I also think the above vesting program, if adopted, should cover directly held assets of citizen residents of recipient countries in those cases where, for one reason or another, no application for unblocking has been filed. Vesting action in this type of case should be taken only after appropriate consultation with the interested recipient country. The implementation of this program will require the following action:

1. A new census of those blocked assets coming within the vesting program will have to be taken.* Because of the extension of the certification procedure under General License No. 95 until December 31, 1948, the TFR-600 reports plus the fourth copies cannot be used as a basis for the vesting program. As you know, the fourth copies did not have to be submitted to the Office with respect to property unblocked, by certification or otherwise, subsequent to October 1, 1948.

The question of taking a new census was discussed by us with the Foreign Exchange Committee in New York just prior to the transfer of jurisdiction. At that time, we were advised by the representatives of the banking institutions that they had no objection to a new census. In fact, it was indicated to us that the banks would prefer a new census rather than be required to submit current reports of property unblocked either by way of certification or by special or general license.

2. When the details of a new census are worked out, a public announcement should be made fixing a date when vesting action by this Office will begin with respect to assets not unblocked. This date will presumably be fixed approximately as of the time for the bar date for the receipt of the new census reports. Direct applications for unblocking should be invited during this period.

If the vesting program is initiated, a decision will have to be made with respect to the disposition to be made of applications for unblocking that

* The exact form and detail of the new census report will depend upon the type of vesting order to be issued. In the interest of simplicity and speed in getting the vesting orders out, I recommend a limited "all property" vesting order.

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are pending as of the bar date for vesting and as to whether new applications for unblocking should be accepted after the bar date. I think that we must continue to process pending applications and that we should accept applications filed subsequent to the bar date in those cases where the assets have not yet been vested. By refusing to consider pending applications and to accept new applications, we would only be adding to the administrative burden of the Office, since the applicants would presumably be eligible for return of their property under the present return legislation.

Another problem is the impact of such a vesting program on our continued use of the Federal Reserve Bank of New York. As I have advised you, Mr. Davis has expressed the opinion that foreign funds work is a dying operation. He has indicated that his personnel is restless and has no incentive to continue to do this type of work. Furthermore, other Departments of the Federal Reserve Bank are anxious to obtain the experienced personnel still employed in foreign funds work. Mr. Davis thinks that if the vesting program is adopted, the Office ought to discontinue using the Federal Reserve Bank.

Assuming that the vesting program is adopted, I think we should continue to utilize the Federal Reserve Bank at least until after the census is taken and vesting action actually begins. Otherwise, the Foreign Funds Section, understaffed as it is, might not be able to handle the large number of inquiries and applications that would probably come in after a public announcement is made of the vesting program.

II. Baltic and Satellite countries which were former enemies

Because of political reasons and until the State Department takes some action in the matter, no program can be made with respect to Baltic (Lithuania, Latvia and Estonia) assets or with respect to assets of the satellite countries which were former enemies (Rumania, Hungary and Bulgaria). These assets will have to remain blocked.

III. Finland, Poland and Czechoslovakia

With respect to these countries, the latest available figures indicate that their blocked assets amount to approximately \$4,500,000. Mrs. Henderson advises me that there are no known enemy business enterprises in those countries. In view of the small amount of blocked assets and the information Mrs. Henderson has given me, I think that the amount of enemy property that might come to light with respect to these blocked assets would be trivial. Accordingly, it is my opinion that these three countries should be unblocked in the same manner that Yugoslavia was unblocked. General License No. 53 would have to be amended by including Finland, Poland and Czechoslovakia in the General Licensed Trade Area.

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I have been informally advised that the State Department would have no objection to our taking this action.

IV. Germany and Japan

Blocked assets of these countries and their nationals will continue to be vested in accordance with the vesting policy.

I recommend that immediate steps be taken to place the above program into operation.

(Signed) Leon R. Brooks

L. R. B.

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*Rec'd of operations
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FORM DS-10 2-10-47	DEPARTMENT OF STATE	DATE
REFERENCE SLIP		
TO: <u>Don Sham</u>		
<u>OAP</u>		
<input type="checkbox"/> ADVISE <input type="checkbox"/> APPROVE & RETURN <input type="checkbox"/> AS YOU REQUESTED <input type="checkbox"/> ATTACH FILE <input type="checkbox"/> ATTENTION <input type="checkbox"/> COMMENT & RETURN <input type="checkbox"/> CONSIDER <input type="checkbox"/> COPYING <input type="checkbox"/> CORRECT <input type="checkbox"/> FILE <input type="checkbox"/> FOLLOW-UP <input type="checkbox"/> FOR YOUR INFORMATION <input type="checkbox"/> HOLD <input type="checkbox"/> INITIALS NEEDED <input type="checkbox"/> INSTRUCT <input type="checkbox"/> INVESTIGATE & REPORT <input type="checkbox"/> JUSTIFY <input type="checkbox"/> KEEP ME ADVISED <input type="checkbox"/> LEGAL MATTER <input type="checkbox"/> MEMO REQUIRED <input type="checkbox"/> NOT INTERESTED <input type="checkbox"/> NOTE & DESTROY <input type="checkbox"/> NOTE & FILE	<input checked="" type="checkbox"/> NOTE & FORWARD <input type="checkbox"/> NOTE & RETURN <input checked="" type="checkbox"/> PER TELEPHONE TALK <input type="checkbox"/> PREVIOUS CORRESPON. <input type="checkbox"/> PRIORITY ACTION <input type="checkbox"/> RECONSIDER <input type="checkbox"/> RECOMMEND ACTION <input type="checkbox"/> RECORD <input type="checkbox"/> REPLY <input type="checkbox"/> RETURN TO SENDER <input type="checkbox"/> REWRITE <input type="checkbox"/> SEE ME <input type="checkbox"/> SIGNATURE REQUIRED <input type="checkbox"/> TAKE ACTION <input type="checkbox"/> TRANSFER <input type="checkbox"/> TYPE <input type="checkbox"/> VERIFY <input type="checkbox"/> REPLY FOR SIGNATURE OF	
REMARKS:		
<p><i>Don. - Herewith a letter copy of the letter from S. Jaspak with you about several days ago.</i></p>		
FROM <u>Hogue</u>		

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Rec'd Operations
Research 7/17/50.
W.H.H.

Rubin and Schwartz
Attorneys at Law
1822 Jefferson Place, N.W.
Washington 6, D.C.

June 26, 1950

Mr. Adrian S. Fisher
The Legal Adviser
Department of State
Washington, D. C.

See
122205
10-20-50
FEC files

Dear Mr. Fisher:

I write in connection with the problem of the unblocking of property, particularly of persecutees resident in Roumania, Bulgaria and Hungary.

The assets of such persons are at present blocked pursuant to orders issued originally by the United States Treasury Department and since continued in effect. Pursuant to long standing administrative policies which have since been confirmed by the Congress, the United States has, however, unblocked from time to time and upon presentation of a properly documented power of attorney the assets of religious, racial or political persecutees.

As is quite obvious, the American Jewish Committee, on whose behalf I write, heartily endorses and supports the commendable policy of the United States in giving every aid and assistance to those who were in fact the enemies of the real enemies of the United States. Nevertheless, it has come to our attention that powers of attorney which are given by persecutees still resident in Iron Curtain countries, in almost all cases, are given under duress. Particularly is this so in the situation in which the resident of the Iron Curtain country gives a power of attorney in favor of the consulate, national bank or other governmental official or agency of that country. In such cases, it is quite clear that the owner of the assets in the United States in reality derives little or no benefit from the unblocking of his property. The assets in fact are taken over by his government and compensation, if any, is paid in local currency at an entirely unrealistic rate of exchange.

Under these circumstances, the American Jewish Committee has been in touch with the Office of Alien Property of the Department of Justice and has received certain assurances that powers of attorney granted by

persons

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Review of...
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persons still resident in the Iron Curtain countries and running in favor of the consulates, national banks or other governmental agencies or officials will be carefully scrutinized and that unblocking applications based on such powers will be rejected. There is, however, some element of uncertainty in this picture. In the first place, the rejection of such a power of attorney by the Office of Alien Property may raise legal complications, unless such action is supported by the Department of State. In the second place, situations undoubtedly exist in which properties have been unblocked pursuant to such powers of attorney and in which the banks still retain the assets in question but are under constant pressure to pay them out.

It is our considered view that it would be extremely helpful if the Department of State were officially to apprise the Department of Justice, and through it, the New York banks of the fact that at present there exists a strong presumption to the following effect: that any power of attorney issued by a political, racial or religious persecutee resident in Roumania, Bulgaria or Hungary which runs in favor of an American consulate of those countries or of their national banks or any other governmental officials or agencies has been obtained under duress and against the will of the signer of the power of attorney. The presumption, of course, should not apply in cases where it is clear that a power of attorney has been smuggled out of the country and is in the hands of a responsible person not subject to the pressure of the Iron Curtain countries. Equally obvious, no change should take place in the procedure presently in effect for the unblocking of assets in the United States of persecutees who are physically outside of Roumania, Hungary and Bulgaria. To the extent possible the declaration of policy embodied in the above stated presumption should be made retroactive.

On behalf of the American Jewish Committee, I am

Sincerely yours,

Seymour J. Rubin

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By	<u>mb11</u> NARA Date <u>1/4/00</u>

David L. Bazelon
 Assistant Attorney General
 Director, Office of Alien Property
 Henry G. Hilken
 Chief, Operations Branch
 Disposition of assets of foreign companies in which there
 are 25% to 50% enemy stock interests

August 5, 1949

Up to the present time this Office has not taken any action with respect to the property in this country of corporations or other business organizations organized under the laws of foreign non-enemy countries in which the enemy participation runs between 25% and 50%. The cases falling in this category have been held in abeyance pending a policy decision as to the appropriate disposition thereof. It is my opinion that the time has now arrived when this Office can and should make a decision with respect to these cases.

When, after the cessation of hostilities, the certification agreements were worked out with the friendly foreign governments with respect to the assets in this country of their nationals, such agreements provided that the foreign governments might certify the assets in this country of companies organized under their laws where the enemy participation in such companies was less than 25%, and after the certification procedure was terminated, this Office, continuing the same standard, has entertained applications for unblocking, and has unblocked, the assets of such companies where the holders of more than 75% of the stock were themselves eligible for unblocking and the company was not otherwise enemy controlled. At the other extreme, the Office has consistently refused to unblock assets of such companies where the enemy interest was 50% or higher and has in many such cases vested their assets. As you know, in the Brussels Agreement the interest of this government in at least the enemy portion of the assets of such companies is recognized and the same is true of the recently negotiated Swiss agreement in the so-called "participation" cases.

There has thus been left the category of cases described above wherein the enemy interest ranges between 25% and 50%. It is my opinion that the property in this country of such companies, where there is no evidence of their acting for or on behalf of the enemy or enemy control, should be unblocked. This is consistent with the position which this government took both in the Brussels and Swiss agreements. Such enemy interest as does exist in these companies should be dealt with by the government of the country in which they are organized.

A case presently under consideration by the Foreign Funds Section which is illustrative is that of Societe Union des Combustibles (UNICO). Such company has in this country cash in the amount of approximately \$28,000, and is owned 74% by persons eligible for unblocking and 26% by German enemies. (The German enemy stock interest has been sold to non-enemy stockholders during the war; however, this Office would not, in examining the status of the company, take such sale into consideration).

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UNICO is an operating company and has always been under French management. Up to now, in the absence of a definite policy covering such case, this Office has refused to unblock.

I recommend that we unblock all the assets of UNICO and other operating companies organized under the laws of non-enemy countries in which the enemy participation is less than 50%, the other participations are all eligible for unblocking under our usual standards and there is no evidence of acting for or on behalf of the enemy or enemy control.

It should be noted, of course, that I am referring in this memorandum only to operating companies of the usual type. Assets of family and personal holding and investment companies should continue to be treated as in the past, i.e., vast that portion of the assets related to the percentage of enemy stock interest in the holding company even though such enemy interest is less than 25%.

(Signed) Henry G. Hillman

H.G.H.

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BUREAU OF THE PUBLIC DEBT
 DIVISION OF LOANS AND CURRENCY
 IN YOUR REPLY REFER TO **RA**

TREASURY DEPARTMENT
 FISCAL SERVICE
 WASHINGTON 25

November 29, 1950

Mr. Harold I. Baynton
 Director, Office of Alien Property
 Department of Justice
 Washington 25, D. C.

122850
 OFFICE OF ALIEN PROPERTY
 DEPARTMENT OF JUSTICE
 RECEIVED NOV 30 1950
 ANS'D FEB 12 1951
 NO. ANS _____ DATE _____

Handwritten notes:
 19-174-21
 29-1106
 [Signature]

Dear Mr. Baynton:

Please advise this office whether the accounts listed below are still blocked as shown by your records. If the accounts are blocked, it will be appreciated if you will advise us whether or not checks issued in payment of interest on United States Treasury bonds may be released to the payees.

<u>Name of Payee</u>	<u>Address</u>	<u>Beneficial Interest in National of</u>	<u>Amount</u>	<u>Issue Date</u>
(1) Superintendent of Insurance of the State of Ohio in trust for the benefit and security of the policyholders of the Skandinavia Insurance Company, Ltd. of Copenhagen, Denmark, residing in the United States	% Guaranty Trust Co. of New York 140 Broadway New York 15, N.Y. <i>219-174</i>	Denmark	\$ 70,000	5-21-40
(2) Superintendent of Insurance of the State of New York, in trust for the security of the policyholders and creditors within the United States of the Skandinavia Insurance Company, Ltd. of Copenhagen, Denmark	% Guaranty Trust Co. of New York 140 Broadway New York 15, N.Y.	Denmark	100,000 50,000 50,000	9-27-45 4-3-44 11-2-44
(3) Superintendent of Insurance of the State of New York, in trust for the Skandinavia Insurance Company, Ltd. of Copenhagen, Denmark, for the protection of its policyholders and creditors within the United States	% Guaranty Trust Co. of New York 140 Broadway New York 15, N.Y.	Denmark	50,000	6-16-37

Foreign Funds File - not to be
 Incorporated in Office of Alien Property Files

Handwritten:
 12/5/50
 [Signature]

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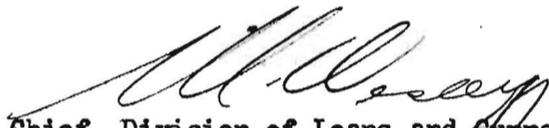
Name of Payee	Address	Beneficial Interest in National of	Amount	Issue Date
(4) Superintendent of Insurance of the State of New York, in trust for La Fonciere Insurance Company Ltd., Paris, France, for the protection of all its policyholders and creditors within the United States	% French American Banking Corporation 31 Nassau St. New York, N. Y. 700-1460 727-1108	France	\$ 37,000	12-31-43
(5) Superintendent of Insurance of the State of Ohio in trust for the benefit and security of the policyholders of the La Paternelle Fire and General Insurance Co. Ltd. of Paris, France, residing in the United States	% Bankers Trust Co. P. O. Box 704 City Hall Station New York, N.Y. 700 1461	France	80,000	9-16-37
(6) Emilienne Rotge <i>700 filed # 6284 Part of Bank of France to Co. 27-918 119 Main St. Houston with file rotge</i>	Bouilh-Pereuilh Canton de Pouyastruc Hautes Pyrenees, France par Chelle Debat 120 Broadway New York, N.Y. 62- 14852641	France	40,000	12-28-36
(7) Kellock Myers as successor trustee under agreement of Erla Howell de Facci Negrati, dated October 25, 1935	120 Broadway New York, N.Y.	Italy	75,000 20,000 25,000 10,000 20,000	6-7-45 6-29-45 4-23-43 6-9-45 9-22-43
(8) The Hartford-Connecticut Trust Co., Trustee by deed of trust under indenture, dated November 13, 1929, of the Netherlands Insurance Company, est. 1845, The Hague, Holland	Trust Department Hartford, Connecticut TFR- 700 38 1468 D-63-116	Netherlands	10,000	2-15-45
(9) American Guarantee and Liability Insurance Company New York, N. Y.	% City Bank Farmers Trust Company 22 William St. New York 15, N.Y. 700-1469	Switzerland	50,000 70,000	4-9-45 7-14-44
(10) Treasurer of the State of North Carolina in trust for the American Guarantee and Liability Insurance Company and the State of North Carolina as their interests may appear	% National City Bank of New York 55 Wall St. New York, N.Y.	Switzerland	25,000	7-14-44

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 Entry FFC Subj Files
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 Box 95

DECLASSIFIED
 Authority NND 968103
 By MB11 NARA Date 1/4/00

<u>Name of Payee</u>	<u>Address</u>	<u>Beneficial Interest in National of</u>	<u>Amount</u>	<u>Issue Date</u>
(11) Superintendent of Insurance of the State of New York in trust for the security of the policyholders of the American Guarantee and Liability Insurance Company, New York, N.Y., within the United States	% The National City Bank of New York 55 Wall St. New York, N.Y.	Switzerland	\$400,000	6-23-44

Very truly yours,


 Chief, Division of Loans and Currency

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By	Wb/11 NARA Date 1/4/00

FFC

David L. Bazelon
 Assistant Attorney General
 Director, Office of Alien Property
 Henry G. Hilken
 Chief, Operations Branch
 Disposition of assets of foreign companies in which there
 are 25% to 50% enemy stock interests

August 5, 1949

Up to the present time this Office has not taken any action with respect to the property in this country of corporations or other business organizations organized under the laws of foreign non-enemy countries in which the enemy participation runs between 25% and 50%. The cases falling in this category have been held in abeyance pending a policy decision as to the appropriate disposition thereof. It is my opinion that the time has now arrived when this Office can and should make a decision with respect to these cases.

When, after the cessation of hostilities, the certification agreements were worked out with the friendly foreign governments with respect to the assets in this country of their nationals, such agreements provided that the foreign governments might certify the assets in this country of companies organized under their laws where the enemy participation in such companies was less than 25%, and after the certification procedure was terminated, this Office, continuing the same standard, has entertained applications for unblocking, and has unblocked, the assets of such companies where the holders of more than 75% of the stock were themselves eligible for unblocking and the company was not otherwise enemy controlled. At the other extreme, the Office has consistently refused to unblock assets of such companies where the enemy interest was 50% or higher and has in many such cases vested their assets. As you know, in the Brussels Agreement the interest of this government in at least the enemy portion of the assets of such companies is recognized and the same is true of the recently negotiated Swiss agreement in the so-called "participation" cases.

There has thus been left the category of cases described above wherein the enemy interest ranges between 25% and 50%. It is my opinion that the property in this country of such companies, where there is no evidence of their acting for or on behalf of the enemy or enemy control, should be unblocked. This is consistent with the position which this government took both in the Brussels and Swiss agreements. Such enemy interest as does exist in these companies should be dealt with by the government of the country in which they are organized.

A case presently under consideration by the Foreign Funds Section which is illustrative is that of Societe Union des Combustibles (UNICO). Such company has in this country cash in the amount of approximately \$28,000. and is owned 74% by persons eligible for unblocking and 26% by German enemies. (The German enemy stock interest has been sold to non-enemy stockholders during the war; however, this Office would not, in examining the status of the company, take such sale into consideration).

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Authority NND 968103
By mb11 NARA Date 1/4/00

Walter L. Huselton
Assistant Attorney General

August 8, 1949

- 2 -

UNICO is an operating company and has always been under French management. Up to now, in the absence of a definite policy covering such case, this Office has refused to unblock.

I recommend that we unblock all the assets of UNICO and other operating companies organized under the laws of non-enemy countries in which the enemy participation is less than 50%, the other participations are all eligible for unblocking under our usual standards and there is no evidence of acting for or on behalf of the enemy or enemy control.

It should be noted, of course, that I am referring in this memorandum only to operating companies of the usual type. Assets of family and personal holding and investment companies should continue to be treated as in the past, i.e., vest that portion of the assets related to the percentage of enemy stock interest in the holding company even though such enemy interest is less than 25%.

(Signed) Henry G. Hilken
H.G.H.

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DECLASSIFIED	
Authority	<u>NND 968103</u>
By <u>mbj</u>	NARA Date <u>1/4/00</u>

F.F.C.

Thomas H. Creighton, Jr.,
 Chief, Estates & Trusts Branch
 Leon R. Brooks, Chief,
 Foreign Funds Section
 Procedure for unblocking enemy property

December 8, 1949

LRB:MW:ee

This is to confirm our informal understanding as to the method to be employed in the unblocking of enemy property which, under current policy, is not to be vested.

Where the letter, advising that the property is not to be vested, is addressed to the custodian of the property, such as a trustee, bank, insurance company, etc., it would be administratively desirable to incorporate the unblocking license in the letter. It is suggested that in substance the following language be used in such letter: - "Insofar as Executive Order No. 8389, as amended, is concerned and notwithstanding General Ruling No. 11A, this letter will serve to authorize you to regard....(describe property to be unblocked).... as property in which no blocked country or national thereof has, or has had, any interest."

Where the letter is not addressed to the custodian of the property, the addressee should be advised to file an application in duplicate with our New York Office. The addressee should also be advised to attach a copy of the letter to the application. This will facilitate the work of the Foreign Funds Section in processing the application.

(Signed) Leon R. Brooks

L. R. B.

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Authority	<u>NMD 968103</u>
By <u>Wb/1</u>	NARA Date <u>1/4/00</u>

RJR

121429
 HGH:LRB:HW:lem

August 30, 1950

W
JM

Mr. Willard L. Thorp
 Assistant Secretary for Economic Affairs
 Department of State
 Washington, D. C.

Dear Mr. Thorp:

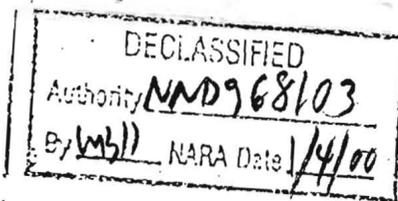
During Congressional consideration of the Marshall Plan the National Advisory Council was requested to consider the extent to which this Government should assist countries receiving financial assistance under the European Recovery Program in locating the assets of their nationals concealed in the United States. Secretary of the Treasury Snyder, as Chairman of the National Advisory Council, in his letter of February 2, 1948 to Senator Vandenberg, then Chairman of the Senate Foreign Affairs Committee, set forth the program, developed by the Justice and Treasury Departments, which would be put into operation by this Government to assist recipient countries in obtaining control of the blocked assets in the United States of their resident citizens. As you know, one of the principal reasons for the transfer of jurisdiction over blocked property from the Treasury Department to the Department of Justice was to carry out this program. In this connection your attention is directed to the letter, dated June 29, 1948, from the then Under Secretary of State, Robert A. Lovett, to the then Attorney General, Tom C. Clark.

The final step of the program set forth in the Snyder-Vandenberg letter called for the vesting of indirectly-held assets (i.e., in the names of financial institutions in Switzerland, Liechtenstein and the recipient countries) which had not been unblocked pursuant to the certification procedure or by special licenses issued by this Office. Directly-held assets, which were not thus unblocked, were also to be vested after appropriate investigation by and consultation with the recipient countries involved. Vesting action was to be based on the presumption that the beneficial owners of such assets, because of their failure to apply for unblocking, were enemies under the Trading with the Enemy Act. Of course, any vested assets which were proved to be non-enemy would be returned under existing law applicable to vested property.

The Office of Alien Property, charged with the responsibility for executing the program described in the Snyder-Vandenberg letter, has now reached the vesting stage of that program. Accordingly, it is

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 Box 95



Mr. Wilford

taking this opportunity to advise you that it intends to take immediate steps to vest the remaining blocked assets which fall within the scope of that program. For your information, the initial steps in this particular phase of the program will be (1) the taking of a new census of blocked assets and (2) consultations with those governments receiving aid under the Marshall Plan to coordinate our respective activities in the light of the objectives described in the Snyder-Vandenberg letter.

Very truly yours,

Harold I. Baynton

Harold I. Baynton
 Assistant Attorney General
 Director, Office of Alien Property

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DECLASSIFIED
Authority <u>NND 968103</u>
By <u>mbj</u> NARA Date <u>1/4/00</u>



TREASURY DEPARTMENT

WASHINGTON

SEP 11 1950

Dear Mr. Baynton:

Reference is made to your letter of August 30, 1950 with which you enclosed a copy of a letter of the same date addressed to the Assistant Secretary for Economic Affairs, Department of State, announcing the intention of the Department of Justice to take steps to vest those remaining blocked assets which fall within the scope of the program described in a letter of February 2, 1948 from the Secretary of the Treasury as Chairman of the National Advisory Council to Senator Vandenberg.

I wish to advise you that the Treasury Department considers your proposed action to be highly desirable at this time. Not only will this action terminate World War II blocking controls in accordance with the program presented to the Congress after the National Advisory Council had given this matter full consideration but it will also have a further importance. By insuring, in the only practical way, that the World War II blocking controls are successfully terminated this action will be of very considerable importance in strengthening any future program which it may become necessary for this Government to take in controlling foreign assets in the United States if the international situation should worsen.

I am sending a copy of this letter to the Assistant Secretary for Economic Affairs, Department of State, for his information with regard to the views of the Treasury Department in this connection.

Very truly yours,

Acting Secretary of the Treasury

909

Honorable Harold I. Baynton
 Assistant Attorney General
 Director, Office of Alien Property
 Department of Justice
 Washington, D. C.

034-210
OFFICE OF ALIEN PROPERTY DEPARTMENT OF JUSTICE
RECEIVED SEP 13 1950
ANSID
NO. 11 ✓ 9/29/50
<u>121732</u>

Received
 9-13-50
 Secretary's Office

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By mbll NARA Date 1/4/00

FFC Files

FROM: Donald Sham,
Secretary,
Office of Alien Property

TO: Henry G. Hilken, Chief
Operations Branch

Since the letter of August 30, 1950, referred to in the attached letter from State, originated in your Branch, we are referring the incoming letter of September 29, 1950 to you.

John J. McDonnell
Acting Secretary

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Entry FFC Study Files
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Box 95

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Authority NND 968103
By wbl NARA Date 1/4/00

FFC Files

ADDRESS OFFICIAL COMMUNICATIONS TO
THE SECRETARY OF STATE
WASHINGTON 25, D. C.

DEPARTMENT OF STATE
WASHINGTON

122274 *Def*



In reply refer to
MN

September 29, 1950

034-710
OFFICE OF ALIEN PROPERTY
OCT 2 1950
NOV 8 1950
#121429

My dear Mr. Baynton:

Reference is made to your letter of August 30, 1950 announcing the intention of the Office of Alien Property to vest those remaining blocked assets which fall within the scope of the program described in the letter of February 2, 1948 from the Secretary of the Treasury, as Chairman of the National Advisory Council, to Senator Vandenberg, then Chairman of the Senate Foreign Relations Committee.

I wish to advise you that the Department of State concurs in your proposed action which contemplates, as further implementation of the program as agreed upon in the National Advisory Council (1) the taking of a new census of blocked assets, and (2) consultations with the "recipient countries," or, as described in your letter, those governments receiving aid under the Marshall Plan. In this connection, I assume that there will be excluded from such program the assets of Rumania, Bulgaria, Hungary, Poland, Czechoslovakia, Finland and the three Baltic States, Estonia, Latvia and Lithuania.

I understand that by his letter of September 11, 1950, the Acting Secretary of the Treasury has informed you why the Treasury Department considers your proposed action to be desirable at this time. The Department of State is in general agreement with such views, and suggests that in addition to the "recipient countries," you bring the proposed vesting action to the attention of the countries that may be affected to ascertain whether they have any cases that might be appropriate for licensing.

Sincerely yours,

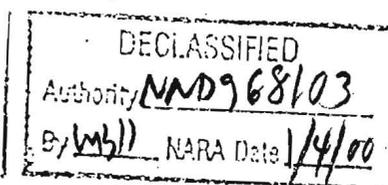
John E. O'Gara

Acting Assistant Secretary for Economic Affairs

The Honorable
Harold L. Baynton,
Assistant Attorney General,
Director, Office of Alien Property.

Received
10-5-50
Secretary's Office

RG 131
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HGH:LMB:lea

Harold I. Baynton, Assistant Attorney General
 Director, Office of Alien Property
 Henry G. Hilken
 Chief, Operations Branch
 Disposition of assets of foreign companies in which there
 are 25% to 50% enemy stock interests

October 18, 1950

M
 Up to the present time this Office has not taken any action with respect to the property in this country of corporations or other business organizations organized under the laws of foreign non-enemy countries in which the enemy participation runs between 25% and 50%. The cases falling in this category have been held in abeyance pending a policy decision as to the appropriate disposition thereof. It is my opinion that the time has now arrived when this Office can and should make a decision with respect to these cases.

When, after the cessation of hostilities, the certification agreements were worked out with the friendly foreign governments with respect to the assets in this country of their nationals, such agreements provided that the foreign governments might certify the assets in this country of companies organized under their laws where the enemy participation in such companies was less than 25%, and after the certification procedure was terminated, this Office, continuing the same standard, has entertained applications for unblocking, and has unblocked, the assets of such companies where the holders of more than 75% of the stock were themselves eligible for unblocking and the company was not otherwise enemy controlled. At the other extreme, the Office has consistently refused to unblock assets of such companies where the enemy interest was 50% or higher and has in many such cases vested their assets. As you know, in the Brussels Agreement the interest of this government in at least the enemy portion of the assets of such companies is recognized and the same is true of the recently negotiated Swiss agreement in the so-called "participation" cases.

There has thus been left the category of cases described above wherein the enemy interest ranges between 25% and 50%. It is my opinion that the property in this country of such companies, where there is no evidence of their acting for or on behalf of the enemy or enemy control, should be unblocked. This is consistent with the position which this government took both in the Brussels and Swiss agreements. Such enemy interest as does exist in these companies should be dealt with by the government of the country in which they are organized.

Further, as you know, under Section 32 of the Act, property of corporations or other business organizations organized under the laws of foreign non-enemy countries is subject to return if such corporations are not enemy controlled and the enemy interest therein

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By	<u>(M51)</u> NARA Date <u>1/4/00</u>

-2-

is less than 50%. Accordingly, the assets of such companies which are vested by the Office would be returned in the absence of evidence of enemy control or other factors which would make applicable the so-called "national interest" clause of Section 32. Finally, I believe it necessary at this time to dispose of cases of this type in view of the program to vest assets remaining blocked. Since applications have been filed in most, if not all, of these 25-50% cases, it would not be appropriate to vest on the presumption of enemy ownership and the cases should be decided on their merits.

Accordingly, I recommend that we unblock all the assets of operating companies organized under the laws of non-enemy countries in which the enemy participation is less than 50%, the other participations are all eligible for unblocking under our usual standards and there is no evidence of acting for or on behalf of the enemy or enemy control.

It should be noted, of course, that I am referring in this memorandum only to operating companies of the usual type. Assets of family and personal holding and investment companies should continue to be treated as in the past, i.e. consider for vesting that portion of the assets related to the percentage of enemy stock interest in the holding company even though such enemy interest is less than 25%.

(Signed) Henry G. Hilken
 H.G.H.

310651

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Entry FEC Subj Files
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Box 95

DECLASSIFIED
Authority NND 968103
By mbj NARA Date 1/4/00

FROM: Henry G. Hilken, Chief
Operations Branch

TO: Mr. Wilford

I agree with
your comments. I
suppose a reply
to State is in
order.

H.

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 Entry FEC Subj Files
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 Box 95

DECLASSIFIED
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 By mbj NARA Date 1/4/00

TO: Mr. Hilken

FROM: Max Wilfand

I think the recommendation in the 2nd paragraph is sound and we should follow.

As to Rubins' proposal in 3rd paragraph I feel strongly that we should say "no". The approach to this, in my judgment is a strong and firm recommendation from State that we reblock, though, from the practical point of

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By mbj NARA Date 1/4/00

view I don't think much, if
anything, will be accomplished.
I have seen a few letters
that have come in which ask
us to cancel assignments to
satellite banks, etc. These
letters, however, related to blocked
accounts ineligible for unblocking
and not to those of persecuted.

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By (mb) NARA Date 1/4/00

ADDRESS OFFICIAL COMMUNICATIONS TO
THE SECRETARY OF STATE
WASHINGTON 25, D. C.

DEPARTMENT OF STATE
WASHINGTON



In reply refer to
EE

October 20, 1950

My dear Mr. Baynton:

Enclosed herewith is a copy of a letter of June 26, 1950 from Mr. Seymour J. Rubin, representing the American Jewish Committee, on the question of the release of blocked funds under powers of attorney given by persecutees still resident in Bulgaria, Hungary and Rumania.

The Department of State is of the opinion that it is in the national interest for the Office of Alien Property to deny unblocking applications based upon powers of attorney executed by persecutees still resident in Bulgaria, Hungary, and Rumania in favor of officials or agencies of the governments of these countries. As you are aware, the governments of these countries frequently employ excessive methods to obtain control of the dollar assets of their nationals. Further, having obtained control they utilize the assets for the benefit of the present communist regimes. It is the desire of the Department to minimize the flow of United States dollars to the countries concerned.

Mr. Rubin proposes that the Department and the Office of Alien Property join in apprising the New York banks that any power of attorney of the kind described above may be presumed to have been obtained under duress. The purpose of transmitting this statement

to the

RECORDED

The Honorable
Harold L. Baynton,
Assistant Attorney General,
Director, Office of Alien Property
Department of Justice.

122205
OFFICE OF ALIEN PROPERTY
DEPARTMENT OF JUSTICE
RECEIVED OCT 23
ANS'D ✓ 11-30-50
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Received
10-23-50
Secretary's Office

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to the New York Banks would be to strengthen their resistance to handing over funds already unblocked but not yet withdrawn. No recommendations with respect to this proposal are made at this time because it is believed that few, if any, accounts are in the category. The Department will appreciate receiving any information you may have on the subject and your views on the desirability of an approach to the New York banks in the matter.

Sincerely yours,

Adrian S Fisher

Adrian S. Fisher
The Legal Adviser

Enclosure:

Copy of letter dated
June 26, 1950.

310656

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Authority	NND 968103
By (MB)	NARA Date 1/4/00

COPY

Rubin and Schwartz
 Attorneys at Law
 1822 Jefferson Place, N.W.
 Washington 6, D.C.

June 26, 1950

Mr. Adrian S. Fisher
 The Legal Adviser
 Department of State
 Washington, D. C.

Dear Mr. Fisher:

I write in connection with the problem of the unblocking of property, particularly of persecutees resident in Roumania, Bulgaria and Hungary.

The assets of such persons are at present blocked pursuant to orders issued originally by the United States Treasury Department and since continued in effect. Pursuant to long standing administrative policies which have since been confirmed by the Congress, the United States has, however, unblocked from time to time and upon presentation of a properly documented power of attorney the assets of religious, racial or political persecutees.

As is quite obvious, the American Jewish Committee, on whose behalf I write, heartily endorses and supports the commendable policy of the United States in giving every aid and assistance to those who were in fact the enemies of the real enemies of the United States. Nevertheless, it has come to our attention that powers of attorney which are given by persecutees still resident in Iron Curtain countries, in almost all cases, are given under duress. Particularly is this so in the situation in which the resident of the Iron Curtain country gives a power of attorney in favor of the consulate, national bank or other governmental official or agency of that country. In such cases, it is quite clear that the owner of the assets in the United States in reality derives little or no benefit from the unblocking of his property. The assets in fact are taken over by his government and compensation, if any, is paid in local currency at an entirely unrealistic rate of exchange.

Under these circumstances, the American Jewish Committee has been in touch with the Office of Alien Property of the Department of Justice and has received certain assurances that powers of attorney granted by

persons

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Rub:
 At:

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By (mb)	NARA Date 1/4/00

- 2 -

persons still resident in the Iron Curtain countries and running in favor of the consulates, national banks or other governmental agencies or officials will be carefully scrutinized and that unblocking applications based on such powers will be rejected. There is, however, some element of uncertainty in this picture. In the first place, the rejection of such a power of attorney by the Office of Alien Property may raise legal complications, unless such action is supported by the Department of State. In the second place, situations undoubtedly exist in which properties have been unblocked pursuant to such powers of attorney and in which the banks still retain the assets in question but are under constant pressure to pay them out.

It is our considered view that it would be extremely helpful if the Department of State were officially to apprise the Department of Justice, and through it, the New York banks of the fact that at present there exists a strong presumption to the following effect: that any power of attorney issued by a political, racial or religious persecutee resident in Roumania, Bulgaria or Hungary which runs in favor of an American consulate of those countries or of their national banks or any other governmental officials or agencies has been obtained under duress and against the will of the signer of the power of attorney. The presumption, of course, should not apply in cases where it is clear that a power of attorney has been smuggled out of the country and is in the hands of a responsible person not subject to the pressure of the Iron Curtain countries. Equally obvious, no change should take place in the procedure presently in effect for the unblocking of assets in the United States of persecutees who are physically outside of Roumania, Hungary and Bulgaria. To the extent possible the declaration of policy embodied in the above stated presumption should be made retroactive.

On behalf of the American Jewish Committee, I am

Sincerely yours,

Seymour J. Rubin

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77 Files

HGH: MW: PG: mwf
 122205

November 30, 1950

hu
 Mr. Adrian S. Fisher
 The Legal Adviser
 Department of State
 Washington 25, D. C.

Dear Mr. Fisher:

Reference is made to your letter dated October 20, 1950 concerning the unblocking of property owned by persecutees residing in Bulgaria, Hungary, and Rumania. Enclosed in your letter was a copy of a letter dated June 26, 1950 from Seymour J. Rubin, representing the American Jewish Committee, in which Mr. Rubin suggested that certain steps be taken to ensure that property of persecutees still resident in Bulgaria, Hungary, and Rumania does not fall into the hands of the governments of those countries. You state that it is the opinion of your Department that it is in the national interest for this Office to deny unblocking applications based upon powers of attorney executed by persecutees residing in the countries mentioned above in favor of officials or agencies of these countries.

You are advised that this Office is prepared to deny, and has already adopted the policy of denying, such unblocking applications. In general, it is our policy to issue licenses with respect to property owned by persecutees when it is clearly established that payment is to be made to persons outside the satellite countries provided such persons are in no way connected with the governments of such countries. Further, in those cases the licenses are limited to authorize payment only to such persons.

Mr. Rubin also proposes that, with respect to property of persecutees which has already been unblocked but not yet withdrawn, this Office and your Department join in apprising the New York banks that any powers of attorney in favor of officials or agencies of satellite governments may be presumed to have been obtained under duress. Your Department makes no recommendations with respect to this proposal of Mr. Rubin because it is believed that few, if any, accounts are in this category. You request information on the subject and our views on the desirability of an approach to the New York banks in this matter.

310659

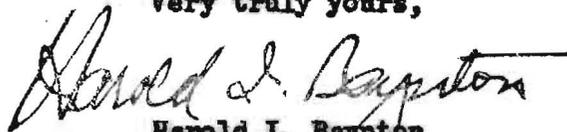
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Authority <u>NND 968103</u>
By <u>mbj</u> NARA Date <u>1/4/00</u>

- 2 -

This Office shares your view that there is probably very little unblocked persecutee property which has not yet been withdrawn and placed at the disposal of the satellite countries involved. It would therefore appear that Mr. Rubin's proposal would have little or no practical effect. Further, even if it were assumed that such property has not been withdrawn, this Office is of the opinion that there are serious legal and policy considerations involved in taking the step proposed by Mr. Rubin. If you wish, representatives of this Office will be glad to meet with representatives of your Department at a mutually convenient time to explore these considerations.

Very truly yours,



Harold I. Baynton
Assistant Attorney General
Director, Office of Alien Property

310660

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 Authority NND 968103
 By mbj NARA Date 1/4/00

Copy:

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 127567

Jan 22 1952

Mr. Willard L. Thorp
 Assistant Secretary for Economic Affairs
 Department of State
 Washington 25, D. C.

Dear Mr. Thorp:

Reference is made to my letter of August 30, 1950 and the reply of September 29, 1950 of the Acting Assistant Secretary for Economic Affairs regarding the intention of this Office to vest those remaining blocked assets which fell within the scope of the program described in the letter of February 2, 1948 from Secretary of the Treasury Snyder, as Chairman of the National Advisory Council, to Senator Vandenberg, then Chairman of the Senate Foreign Relations Committee.

I wish to advise you that the Office of Alien Property has completed the vesting program set forth in the Snyder-Vandenberg letter. All blocked assets held indirectly in the names of financial institutions in Switzerland, Liechtenstein and the countries which received aid under the Marshall Plan have been vested. In addition, vesting action has been taken with respect to those blocked assets held directly in the names of nationals of such countries in which this Office has reason to believe there was an enemy interest. The approximate value of the property seized under this program is \$7,500,000.

Having completed the vesting phase of the Snyder-Vandenberg Program, this Office sees no further need for continuing its controls over the small residue of blocked property in this country held directly in the names or for the benefit of residents of the ten recipient countries and of Switzerland and Liechtenstein. According to the reports filed with this Office pursuant to Public Circular No. 39, the value of this directly held blocked property amounts to approximately \$18,000,000. A table which itemizes the value of the blocked property for each country involved is attached.

I should like to call your attention to the fact that the values set forth in the table are tabulated from the figures reported to this Office by the American custodians of the property.

Initialed Copy in file - Vesting Program

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These figures, I am advised, are not accurate and from an examination of the reports, it appears certain that the total amount of blocked property is considerably less than that given in the table. For example, in connection with some reports involving blocked interests in American estates and trusts, the reporter, instead of stating the value of the blocked interest, has given the value of the corpus of the trust or of the gross assets of the estate. Again, in many cases, the property reported is described as a cause of action which the foreign national is asserting against the reporter. The value placed upon the cause of action is presumably the amount claimed by the reportee and is undoubtedly far larger than the amount of any judgment which he may obtain. Further, our examination indicates that in many cases the property reported is not really blocked. Such reports were probably filed because of the unfamiliarity of the reporter with the blocking regulations and the scope of the outstanding general licenses such as General Licenses No. 42, 94, 95, 97.

While we do not definitely know why applications for unblocking have not been filed in connection with the small residue of property still blocked, our experience in this field provides some explanations. For example, with respect to interests in estates and trusts, it may be that the interests are contingent or that the administration of the particular trust or estate has not proceeded to the point where the persons involved feel that an application for unblocking is appropriate. In other such cases, the identity of the heirs or the beneficiaries, particularly in cases involving victims of persecution, has not been determined. We also have cases involving book-keeping entries on the books of American companies representing credits in favor of its foreign subsidiaries. Unblocking has not been requested probably because the American companies have had no occasion to change the entries. Further, there are some reports which involve property which owned by a semi-governmental agency of a foreign government which does not expect to dispose of the property. I refer particularly to certain blocked stock of Italian Superpower Corporation, which stock is beneficially owned by Institute de la Ricostruzione Industrielle, an agency of the Italian Government.

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The unblocking action which we intend to take will be in the form of an amendment to General License No. 53 making the ten blocked countries which received aid under the Marshall Plan and Switzerland and Liechtenstein part of the generally licensed trade area. By amending General License No. 53 in this fashion, the countries involved will, under General License No. 53A, no longer be regarded as blocked countries. In addition, persons now in those countries who on October 5, 1945, were present in such countries or in any country which is a member of the generally licensed trade area will also have their interests in property in this country unblocked.

After our intended unblocking action, the countries which will remain blocked will be Germany and Japan, the former enemy satellite countries (Bulgaria, Hungary, Rumania), the Baltic countries (Estonia, Latvia, Lithuania), and Poland and Czechoslovakia. The special restrictions of General Ruling No. 11A, will, of course, continue to apply with respect to the property of any person resident in the twelve countries involved who is a citizen of Germany or Japan and who at any time on or since January 1, 1945 was in any country against which the United States declared war.

Prior to unblocking action with respect to the countries involved herein, this Office intends to send to the governments of the ten countries which received aid under the Marshall Plan copies of the OAP-700 reports which relate to residents of their respective countries who are or are presumed to be citizens of the so-called recipient countries. The transmittal of the copies of the OAP-700 reports will be in accordance with one of the policies underlying the Marshall Plan to assist recipient countries in locating and controlling dollar assets of their nationals hidden in the United States. The governments of the recipient countries as well as Switzerland and Liechtenstein, will be advised of the intended unblocking action of the Office of Alien Property.

This Office feels that with the completion of the vesting program and upon the transmittal of the OAP-700 reports as described above its responsibilities under the Snyder-Vandenberg Program will have been effectively and completely discharged. It therefore desires to take the unblocking action described above in the immediate future.

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If the Department of State is aware of any factors in our foreign relations which make it unwise to unblock at this time any or all of the twelve countries concerned, I would appreciate being advised as soon as possible.

Very truly yours,

s/ Harold I. Baynton
t/ Harold I. Baynton
Assistant Attorney General
Director, Office of Alien Property

Attachment

310664

COUNTRY	CITIZEN—RESIDENTS OF RECIPIENT COUNTRIES	NON-CITIZEN—RESIDENTS OF RECIPIENT COUNTRIES	TOTAL
France	\$ 4,232,969.24	\$ 1,136,365.22	\$ 5,369,334.46
Italy	1,706,140.05	1,483,173.65	3,189,313.70
Netherlands	994,347.04	196,836.74	1,191,183.78
Austria	360,928.94	30,502.13	391,431.07
Belgium	832,675.19	55,128.49	887,803.68
Luxembourg	11,428.77	4,998.03	16,426.80
Norway	907,544.09	3,993.63	911,537.72
Sweden	706,486.28	30,365.00	736,851.28
Denmark	799,471.85	47,976.29	847,448.14
Greece	2,234,531.11	35,506.30	2,270,037.41
TOTAL	\$12,786,512.56	\$ 3,024,845.48	\$15,811,368.04
Switzerland			\$ 2,257,466.04

GRAND TOTAL

\$18,068,834.08

REPRODUCED AT THE NATIONAL ARCHIVES

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RG 131
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Authority NND 968103
 By mbll NARA Date 1/4/00

IB:HG;MW;nwf
 127570

Copy:

January 22, 1952

Honorable John W. Snyder
 Secretary of the Treasury
 Treasury Department
 Washington 25, D. C.

Dear Mr. Snyder:

Reference is made to my letter of August 30, 1950 with which was enclosed a copy of my letter to Mr. Willard L. Thorp, Assistant Secretary for Economic Affairs, Department of State, with regard to the intention of the Department of Justice to take steps to vest those remaining blocked assets which fell within the scope of the program described in your letter of February 2, 1948 to Senator Vandenberg, then Chairman of the Senate Foreign Affairs Committee. Reference is also made to the reply of September 11, 1950 from Mr. E. H. Foley, Acting Secretary of Treasury.

For your information, I am enclosing a copy of my letter of January 22, 1952 to Mr. Thorp concerning the completion of the vesting program described in the Snyder-Vandenberg letter and the intention of this Office to take unblocking action with respect to all blocked countries which received aid under the Marshall Plan and Switzerland and Liechtenstein.

Very truly yours,

s/ Harold I. Baynton
 t/ Harold I. Baynton
 Assistant Attorney General
 Director, Office of Alien Property

Enclosure

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Signed P. Gwirts

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NOH:MW:KCM:lem

February 13, 1951

Mr. Marvin Wesley, Chief
Division of Loans & Currency
Bureau of Public Debt
Treasury Department
Washington 25, D.C.

KCM
PW

Dear Sir:

Reference is made to your letter of November 29, 1950 in which you requested advice relative to the status under Executive Order No. 8389, as amended, of the accounts listed therein, in connection with payment of interest on U. S. Treasury bonds.

For your convenience the accounts are listed below with our comments:

<u>Name of Payee</u>	<u>Address</u>	<u>Beneficial interest in national of</u>	<u>Amount</u>	<u>Issue Date</u>
Superintendent of Insurance of the State of Ohio in trust for the benefit and security of the policyholders of the Skandinavia Insurance Company, Ltd. of Copenhagen, Denmark, residing in the United States	c/o Guaranty Trust Co. of New York 140 Broadway New York 15, N.Y.	Denmark	\$70,000	5-21-40
Superintendent of Insurance of the State of New York, in trust for the security of the policyholders and creditors within the United States of the Skandinavia Insurance Company, Ltd. of Copenhagen, Denmark	c/o Guaranty Trust Co. of New York 140 Broadway New York 15, N.Y.	Denmark	100,000 50,000 50,000	9-27-45 4-3-44 11-2-44

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<u>Name of Payee</u>	<u>Address</u>	<u>Beneficial interest in national of</u>	<u>Amount</u>	<u>Issue Date</u>
Superintendent of Insurance of the State of New York, in trust for the Skandinavia Insurance Company, Ltd. of Copenhagen, Denmark, for the protection of its policyholders and creditors within the United States	c/o Guaranty Trust Co. of New York 140 Broadway New York 15, N.Y.	Denmark	\$50,000	6-16-37
Superintendent of Insurance of the State of New York, in trust for La Fonciere Insurance Company Ltd., Paris, France, for the protection of all its policyholders and creditors within the United States	c/o French American Banking Corporation 21 Nassau St. New York, N.Y.	France	37,000	12-31-43
Superintendent of Insurance of the State of Ohio in trust for the benefit and security of the policyholders of the La Paternelle Fire and General Insurance Co. Ltd. of Paris, France, residing in the United States	c/o Bankers Trust Co., P.O. Box 704, City Hall Station New York, N.Y.	France	80,000	9-16-37
Superintendent of Insurance of the State of New York in trust for the security of the policyholders of the American Guarantee and Liability Insurance Company, New York, N.Y., within the United States	c/o The National City Bank of New York, 55 Wall St., New York, N.Y.	Switzerland	400,000	6-23-44

Our records do not show that these accounts have been unblocked. This letter may, however, be considered as authority so far as Executive Order No. 8389, as amended, is concerned, for you to make payments of interest and principal to the payees.

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Signed P. V. Myron

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<u>Name of Payee</u>	<u>Address</u>	<u>Beneficial Interest in National of</u>	<u>Amount</u>	<u>Issue Date</u>
Emilienne Rotge	Bouilh-Persuilh Canton de Pouyastruc Hantes Pyrennes, France, par Chelle Debat	France	\$40,000	12-28-36
The Hartford-Connecticut Trust Co., Trustee by deed of trust under indenture, dated November 13, 1929, of the Netherlands Insurance Company, est. 1845, The Hague, Holland	Trust Dept. Hartford, Conn.	Netherlands	10,000	2-15-45
American Guarantee and Liability Insurance Company, New York, N.Y.	c/o City Bank Farmers Trust Co., 22 William St., New York, 15, N.Y.	Switzerland	50,000 70,000	4-9-45 7-14-44
Treasurer of the State of North Carolina in trust for the American Guarantee and Liability Insurance Company and the State of North Carolina as their interests may appear.	c/o National City Bank of New York 55 Wall St., New York, N.Y.	Switzerland	25,000	7-14-44
Kellock Myers, as successor trustee under agreement of Erla Howell de Facci Negrati, dated Oct. 25, 1935	120 Broadway New York, N.Y.	Italy	75,000 20,000 25,000 10,000 20,000	6-7-45 6-29-45 4-23-43 6-9-45 9-22-43

Our records do not show that these accounts have been unblocked. Payments may be made only to a blocked account with a domestic bank in accordance with the provisions of General License No. 1.

Account is not blocked by reason of License No. NY-852641 issued to The National City Bank of New York. Payments may be made to payee without reference to this Office.

Very truly yours,

Paul V. Myron
 Deputy Director
 Office of Alien Property

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Authority	<u>NMD 968103</u>
By	<u>Wb/11</u>
NARA Date	<u>1/4/00</u>

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128110

February 28, 1952

Ufficio Italiano dei Cambi
 Servizio Ispezioni
 Certificazioni
 Via Dell 'Unita', 43
 Rome, Italy

Gentlemen:

Reference is made to our letter of February 15, 1952 in which you were advised of our intention to transmit to your government copies of certain reports received by this Office on Form QAP-700 and of our desire to terminate controls over Italian property in this country which is still blocked under Executive Order No. 8389, as amended.

We are today sending you under separate cover copies of these reports which relate to assets blocked in this country as of October 2, 1950 and presumably still blocked as of this date in which there is an interest, direct or indirect, of persons reported to be residing in your country. These persons are either citizens of your country or of those countries which have received aid under the European Recovery Program or are presumed to be citizens of such countries.

Your government is, of course, aware that the information contained in these reports is of a highly confidential nature. It is therefore requested that your government not only treat the information from these reports as strictly confidential but also confine the use of the information to the furtherance of its program for marshalling dollar assets. This Office does not intend to take vesting action with respect to the property reported on the forms being transmitted to your government unless other information comes to our attention which would, under our existing policies, justify such action.

For your information, this Office expects to take action on or about April 1, 1952 to terminate its controls over the relatively small amount of Italian property in this country which is still blocked. We hope that the information which your government under-

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took to make available pursuant to paragraph 6 of Chief of the Italian Economic and Financial Delegation Lombardo's letter of August 14, 1947 to Secretary of the Treasury Snyder and which we requested in our letter of February 15, 1952 will be forthcoming prior to April 1, 1952.

Very truly yours,

Harold I. Baynton
Assistant Attorney General
Director, Office of Alien Property

(Signed) Henry G. Hilken

By Henry G. Hilken, Chief
Intercustodial & Property Branch

CC: Dr. Frederico Cali

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By mbj NARA Date 1/4/00

The Files

February 29, 1952

Max Wilfand, Chief
Foreign Funds Section
OAP-700 Reports

Before transmitting the relative copies of the OAP-700s to those countries receiving aid under the Marshall Plan, all reports relating to residents of the ten countries receiving aid under the Marshall Plan and Switzerland and Liechtenstein were personally examined by Mr. Hilken and me. Mr. Hilken himself examined the reports relating to residents of France and the Netherlands. We both examined the reports relating to residents of Switzerland and I personally examined the remaining reports.

The reports were examined for the purpose of determining whether there was any basis for a finding that there was an enemy interest in the reported property. Vesting Orders were issued with respect to the property reported on those reports in which we thought there was any reason to believe there was an enemy interest. In accordance with the policy of the Office no vesting action was to be taken with respect to the other reports.

All of these reports relate to directly held assets. All reports relating to so-called indirectly held assets were covered by vesting orders issued in accordance with the Snyder-Vandenberg Program.

M. W.

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The Files

February 29, 1952

Max Wilfand, Chief
 Foreign Funds Section
 OAP-700 Reports

The following number of OAP-700 reports were transmitted
 to the governments listed below:

Luxembourg	2
Norway	59
French	373
Belgium	76
Italy	131
Sweden	78
Denmark	42
Greece	86
Dutch	113
Austria	38

M. W.

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 By mb/1 NARA Date 1/4/00

AAPT
 PRESS RELEASE
 MARCH 11, 1952

Attorney General J. Howard McGrath today announced the unblocking of Austria, Belgium, Denmark, France, Greece, Italy, Luxembourg, Norway, The Netherlands, and Sweden, the ten European blocked countries which received aid under the Marshall Plan, and Liechtenstein and Switzerland. This action, the Attorney General stated, followed the completion by the Office of Alien Property of the vesting program made public by the Department of Justice on October 11, 1950 and more fully described in the letter of February 2, 1948 from Secretary of the Treasury Snyder, as Chairman of the National Advisory Council, to Senator Arthur H. Vandenberg, then Chairman of the Senate Foreign Relations Committee.

Harold I. Baynton, Assistant Attorney General, Director, Office of Alien Property, explained that today's action, while affecting only a relatively small amount of property, was a major step in terminating the freezing controls instituted by this Government in April 1940 when Germany invaded Norway. The unblocking was effected by including the 12 countries involved in the generally licensed trade area as defined in General License 53 and by revoking General Rulings 6 and 17. As a result the only blocked countries, insofar as the regulations of the Office of Alien Property are concerned, are (1) Germany and Japan; (2) Poland and Czechoslovakia; (3) Bulgaria,

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Hungary, and Romania; and (4) Latvia, Lithuania and Estonia.

Mr. Baynton stated that most of the property belonging to residents of the 12 countries involved which was originally blocked in 1940 and 1941 has already been released from blocking controls pursuant to general and specific licenses issued by the Treasury Department and the Department of Justice. The effect of today's amendment of General License 53 and the revocation of General Rulings 6 and 17 is to unblock the remaining blocked property, including General Ruling 6 accounts and accounts subject to General Ruling 17, to the extent that persons in any of the 12 countries involved or other non-blocked countries and who were in any such country on October 5, 1945, had interests in such property.

Mr. Baynton stressed that today's action did not unblock the following property:

(1) Property in this country on December 31, 1946 in which a citizen of Germany or Japan and present at anytime on or since January 1, 1945 in any country against which the United States declared war.

(2) Any account in which there is reason to believe there is an interest of any person resident in any of the remaining blocked countries. Of course, if such property has already been unblocked by special or general license, or if acquired in the future, it is in no way affected by today's action. It is still free property.

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(3) Securities which appear on the lists appended to General Rulings 5 and 5B, commonly referred to as looted securities.

(4) Property which has been vested by this Office and which has not yet been reduced to possession. Title to such property is still in the Attorney General and must be surrendered to him pursuant to the terms of the appropriate vesting order.

Finally, Mr. Baynton called attention to the fact that Foreign Assets Control, Treasury Department, now exercises controls over property in which certain Chinese and North Korean nationals have an interest. Today's action does not, of course, release or otherwise affect the Treasury Department controls over such property.

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 By mbll NARA Date 1/4/00

STANDARD FORM NO. 64

MW:mwf

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Files
 FROM : Max Wilfand, Chief
 Foreign Funds Section
 SUBJECT: Unblocking of the ten recipient countries and
 Switzerland and Liechtenstein

DATE: March 18, 1952

A meeting was held at the Guaranty Trust Company of New York yesterday to discuss the documents which had been prepared to effect the unblocking of the ten recipient countries and Switzerland and Liechtenstein. Representatives of all members of the Sub-Committee on Foreign Funds Control of the Foreign Exchange Committee, except the Chase National Bank and the Irving Trust Company, were present. Messrs. Hilken, Gorsuch and I represented the Office of Alien Property.

1. At the meeting it was decided that before issuing the unblocking documents the members of the Sub-Committee would informally submit to the Office a list in duplicate of all blocked cash and custody accounts exceeding \$2,000 in value as of March 17, 1952 held in the names of financial institutions located in the countries to be unblocked. The list would identify the person in whose name the account is held, the address, the title of the account, type of account, the value of the account and the nationality or nationalities under which the account is blocked. It was agreed that the reporting bank could omit, if it is so desired, any account blocked because of the interest therein of a person resident behind the Iron Curtain. The list would serve as a check on the procedures of the Office and the New York financial community in connection with the processing of OAP-700 reports for purposes of vesting under the Snyder-Vandenberg Program. After these lists are submitted, the Office would determine whether or not it wanted similar lists from other banks and brokerage houses not represented on the subcommittee.

2. Mr. Timoney undertook to contact representatives of the Chase National Bank and Irving Trust Company for the purpose of having those institutions send the information which those members present at the meeting undertook to furnish this Office.

3. It was also decided that each member would advise as to the number of German and Japanese accounts it held in which the value of the property in each account was \$1,000 or less.

4. Mr. Hilken stated that the Office was giving consideration to the unblocking of German and Japanese accounts valued at \$1,000 or less provided that the statistics the Office obtains from the members of the committee warrant such action.

5. Mr. Hilken also expressed the hope that the vesting of German and Japanese property would be completed by July 1, 1952. Further, if and when a license was issued unblocking German and Japanese accounts valued at \$1,000 or less, it was suggested that the following

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procedure should be followed to obtain the release of accounts valued at over \$1,000. The custodians of the accounts should write the Office calling its attention to the accounts and the Office would either vest or unblock.

6. The press release drafted in connection with the proposed unblocking was reviewed and several suggestions were made for the purpose of simplification and clarification. It was agreed that I would send Mr. Timoney a revised press release to incorporate the suggestions.

M.W.
M.W.

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C O P Y FOREIGN FUNDS CONTROL

- To:
- (1) ... Mr. Gilbert (Room) (Bldg.)
 - (2) ... Mr. Feig (Mr. Feig) (Room) (Bldg.)
 - (3) ... Mr. Hollander (Room) (Bldg.)
 - (4) Mr. Richards

I am sending you the attached primarily for your information. In addition, of course, your section would have a definite interest in the decisions which are eventually made with respect to certain of the problems raised in the memorandum.

How are we progressing in the preparation of the similar memorandum with respect to the ultimate decisions concerning our currency controls? It seems to me, in addition, that a memorandum of this sort would be helpful in determining our views with respect to the ultimate decisions as to the withdrawal of the Proclaimed List.

From: J.S. Richards 5/12/44
(Date)
..... (Room) (Bldg.)

C O P Y FOREIGN FUNDS CONTROL

- To:
- (1) ... Mr. Richards (Room) (Bldg.)
 - (2) (Room) (Bldg.)
 - (3) (Room) (Bldg.)

The attached represents a preliminary rough draft of Part II of the Defrosting Program; i.e., that part which records for the purpose of further discussion practical problems that will confront FFC when occupied countries are liberated.

From: Walter M. Day (Date)
..... (Room) (Bldg.)

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DRAFT

MEMORANDUM FOR THE FILES

April 18, 1944

*File
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Subject: Disposition of Property in the United States Blocked as Dutch

The purpose of this memorandum is to record as a basis for further discussion some of the problems that Foreign Funds Control should consider in connection with an unblocking program of property under the control of this Government which is blocked as Dutch. Consideration of the problem has been based on the following assumptions: (1) that Holland has been liberated and a government has been established in Holland which has been recognized by this Government; (2) that the Dutch Government has enacted a decree requiring all subjects of the Netherlands to turn over to that government all of their dollar assets; (3) that this Government has agreed to cooperate in making available to the Dutch Government the dollar assets under our control belonging to subjects of the Netherlands; (4) that the official funds of the Dutch Government and its agencies will be made available to the recognized government without restrictions.

In considering the problems that will confront the Control under the conditions above outlined, no attempt has been made to provide for the use of our control of blocked Dutch assets as a lever to persuade the Dutch to: (1) pay any loans made by this Government, or agencies thereof, to the Dutch Government prior to or during the present war, including Lend Lease aid; (2) pay a proportionate share of the costs of operating Foreign Funds Control; (3) recognize and make provision for the payment of general claims of all United States citizens against the Dutch Government and its citizens; (4) synchronize its post war purchasing program and economic plans with those of the United States.

The following are the general categories under which the specific problems will be raised:

- I. Authority for and manner of transfers.
- II. Treatment of various types of Dutch nationals.
- III. Protection of interests of creditors (Preference Policy).
- IV. Outstanding checks, drafts and pay orders.
- V. Determination of enemy interests and conflicting Custodian claims.
- VI. Unknown beneficial ownership.
- VII. Dual nationality.
- VIII. Ad hoc blocked nationals, Proclaimed List Nationals and others about whom we have unsatisfactory information.
- IX. Currency, security and other import controls.

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- X. Disposition of ownership of American business enterprises.
- XI. Establishment of trade.
- XII. Claims of United States citizens with respect to property in Dutch territory.
- XIII. Estates

I. AUTHORITY FOR AND MANNER OF TRANSFERS.

With regard to those blocked Dutch assets under our jurisdiction, there will be the administrative problem of the method of, as well as the authority for, such transfer.

A. Should the transfers be implemented by:

1. Specific licenses to the holders or owners of each account? This would entail a substantial volume of applications but would enable the Control to scrutinize each transfer.
2. Blanket licenses to banking institutions holding a sufficient number of accounts to warrant the issue of such blanket licenses? Such licenses would contain appropriate restrictions as to what accounts would be transferred and under what conditions, including, perhaps, a requirement for a form of certification by an appropriate agency of the Dutch Government. However, even under such a procedure there would be a substantial number of specific applications. (In connection with the British regulations requiring the transfer of dollar assets, we have received individual applications and used the blanket license procedure.)
3. Issuance of a general license containing appropriate restrictions? Under such a procedure there would be a substantial volume of specific applications covering transactions falling outside the terms of the general license which, of necessity, would be somewhat limited in scope.
4. A license issued to an appropriate agency of the Dutch Government that would permit it to receive, and banking institutions to pay, under a method of certification, specified types of accounts blocked as Dutch?

B. Pursuant to what instructions or authority would the transfers be effected:

1. Under instructions issued by the owner of record of the accounts?

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2. Under instructions by the Dutch Government pursuant to its decrees?
 3. Under authority of directive licenses issued by Treasury implementing and supplementing the decrees?
- C. What treatment should be accorded those cases in which the person formerly recognized as having authority to dispose of an account is no longer able to act with respect to the account due to death or other reasons?

II. TREATMENT OF VARIOUS TYPES OF DUTCH NATIONALS.

In the event the Dutch decree covers dollar assets of all Dutch citizens, wherever located, should we permit the transfers, with respect to Dutch citizens residing:

1. In the United States?
2. In non-blocked countries?
3. In blocked neutral countries?
4. In enemy-occupied countries other than Holland?
5. In enemy countries?

In connection with the above, it must be borne in mind that we have permitted Dutch citizens in the United States to use their assets freely and we have also permitted Dutch citizens in other areas to use their assets, subject only to economic warfare considerations. This is particularly true of persons blocked as Dutch in the generally licensed trade area who operate with comparative freedom under General License No. 53.

III. PROTECTION OF INTERESTS OF CREDITORS (PREFERENCE POLICY).

- A. Should the transfer of a Dutch blocked account be licensed if the owner of such blocked account has creditors who are:
1. United States citizens, regardless as to location?
 2. Citizens of countries other than United States but who reside in the United States?
 3. Citizens and residents of any foreign country other than enemy? (There are some cases in which attachments have been obtained against blocked accounts by United States citizens acting as assignees of citizens of other countries.)
 4. Citizens and residents of enemy countries? Or, should we refrain from licensing such transfers until creditors have

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had an opportunity to assert their respective claims?
 If so, what procedure should be established to afford
 creditors such an opportunity?

- B. While a number of claims against blocked Dutch assets have been reduced to judgments and attachments levied, the policy of the Control in refusing to license the payment of such judgments has unquestionably discouraged many creditors both United States and other from taking similar legal action. In addition, there probably are many creditors who have been unable to prosecute their claims or are not aware of the existence of their debtor's assets in the United States.

Furthermore, many of these suits have not been defended and the judgments have been obtained by default. Consequently, certain creditors may have secured a preferred position. In view of this should we:

1. Permit immediate payment of all outstanding judgments?
2. Give the judgment debtor an opportunity to enter a defense?
3. Attempt to vacate or set aside the judgments in order to place all creditors on an equal footing?

IV. OUTSTANDING CHECKS, DRAFTS AND PAY ORDERS.

There are outstanding, and not honored, many checks, drafts and pay orders against blocked Dutch accounts in connection with which no legal action has been taken by the holders. Some of these pay orders are in the United States and have not been paid due to the action of the Control and many others have not come to our attention due to war conditions.

What consideration should be given by the Control to legitimate items of this nature in licensing the transfer of Dutch accounts to the Dutch Government? In the event such claims are recognized: (a) What procedure will be established in order to afford the holders an opportunity to present the items for payment? (b) Should a cut-off date be set in order that items dated subsequent thereto will not be paid under any circumstances? (c) Should we attempt to meet the problem by blanket or general licenses or should each case be treated individually in order that scrutiny can be given each item?

V. DETERMINATION OF ENEMY INTERESTS AND CONFLICTING CUSTODIAN CLAIMS.

- A. To what extent should we go in attempting to determine whether or not there is enemy interest by way of ownership, or as a creditor, in an account which on its face is solely Dutch?
- B. With respect to accounts of Dutch corporations and other legal entities it is recognized that prior to the outbreak of war numerous enemy interests, particularly German, attempted economic

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penetration or attempted to secrete assets by forming Dutch corporations wherein such interest was hidden. Should we, therefore, attempt to determine beneficial ownership before permitting the transfer to the Dutch Government of the accounts of Dutch entities?

- C. What position should be taken with respect to accounts in this country in the names of persons presently residing in Holland who are citizens of enemy countries?
- D. What position should be taken with respect to accounts in the names of corporations or other legal entities domiciled in Holland that are known to be partially or wholly beneficially owned by citizens and residents of enemy countries?
- E. What position should be taken with respect to sub-accounts in the names of Dutch banks which accounts are determined to be beneficially owned by citizens and residents of enemy countries?
- F. What position should be taken with respect to dollar accounts maintained by citizens and residents of enemy countries with Dutch banks, which banks have dollar balances in the United States?
- G. To what extent should we investigate the contents of safe deposit boxes blocked in Dutch names to determine that there is no enemy interest in the contents?

VI. UNKNOWN BENEFICIAL OWNERSHIP.

- A. There are a large number of accounts that have been established subsequent to the effective date of the Order wherein the ownership is not entirely clear; e.g., escrow accounts, accounts established pursuant to directive licenses, accounts held by United States Treasury representing payment for requisitioned merchandise, etc. In the event we are requested to transfer accounts of this nature to the Dutch Government, to what extent should we go in determining that such accounts are (a) beneficially Dutch owned, and (b) who are the rightful Dutch owners?

In such accounts should we permit the transfer to the Dutch Government with an understanding that if some other national interest in the account is subsequently determined the account would be retransferred to the name in which it had originally been established?

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VII. DUAL NATIONALITY.

- A. Should we permit the transfer of accounts belonging to Dutch citizens that are also blocked as other nationalities for technical reasons such as temporary residence in blocked territory other than Dutch?
- B. Should we permit the transfer to the Dutch Government of accounts in the name of Dutch corporations or other legal entities which are partially or wholly owned by persons in blocked countries other than Holland, or in enemy countries?
- C. Should we permit the transfer to the Dutch Government of accounts in the names of corporations or other legal entities domiciled in blocked countries other than Holland which corporations or legal entities are beneficially owned by Dutch citizens?
- D. Should we permit the transfer to the Dutch Government of sub or numbered accounts in the name of Dutch banking institutions which accounts are owned by persons in blocked countries other than Holland or enemy countries regardless of whether the beneficial owner is Dutch or some other nationality?

VIII. AD HOC BLOCKED NATIONALS, PROCLAIMED LIST NATIONALS AND OTHERS ABOUT WHOM WE HAVE UNSATISFACTORY INFORMATION.

Should we eliminate persons of this nature from any overall plan of transferring assets to the Dutch Government and consider each case on its own merits?

IX. CURRENCY, SECURITY AND OTHER IMPORT CONTROLS.

- A. Should we release for transfer to the Dutch Government securities and currency held under General Ruling No. 5 or in General Ruling No. 6 accounts in the name of Dutch citizens where we are not satisfied as to the source?
- B. Should we request the Dutch Government to require all persons under its control to turn over to it all United States currency and dollar securities held in Holland at the time of liberation?
- C. Should we permit the Dutch Government to import into the United States and receive credit for United States currency and dollar securities that may be taken up by the Dutch Government in Holland subsequent to the liberation thereof?
- D. Should we permit the transfer to the Dutch Government of gems, works of art, etc., in the name of Dutch citizens that are

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held in this Government's custody in connection with which we have prevented importation due to lack of information as to origin?

X. DISPOSITION OF OWNERSHIP OF AMERICAN BUSINESS ENTERPRISES.

- A. What position should we take with respect to stock of an American corporation registered in the name of a Dutch corporation, which Dutch corporation is partially or wholly owned by enemy nationals?
- B. Should we immediately unblock all American corporations that are determined to be truly Dutch owned or should we maintain our controls in order to place the Dutch Government in a position better to control those corporations?

XI. ESTABLISHMENT OF TRADE.

- A. Should we permit the resumption of normal trade under private auspices or should there be a period of complete control by the two governments similar to the North African trade program?
- B. If private trade is to be reestablished, under what licensing procedure will such transactions be permitted? (a) By special licenses in order to scrutinize each separate transaction? (b) Under blanket licenses to banks? Or, (c) under a general license procedure similar to the four neutral general licenses?
- C. If private trade is reopened should we permit such trade to be privately financed in view of the decree requiring the transfer of all private Dutch funds to the Dutch Government Account?

XII. CLAIMS OF UNITED STATES CITIZENS WITH RESPECT TO PROPERTY IN NETHERLANDS TERRITORY.

- A. To what extent should consideration be given to the problem of claims arising by virtue of American citizens' interests in property situated within Netherlands territory?
- B. Should we require that the Dutch Government make dollars available for the payment of these claims or should we require that the Dutch Government immediately make local currency credit available with an agreement that such credit will be converted to dollars within a specified time or merely on the same basis as foreign exchange is made available to nationals of other countries?

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XIII. ESTATES.

- A. Since we have permitted only very limited acts of administration in respect to the assets in the United States in the names of residents of Holland (except such residents as were United States citizens) who died after the occupation thereof, should we:
1. Permit the transfer of these assets to the Dutch Government?
 2. Permit the complete administration of these estates under ancillary proceedings?
 3. Disregard the interest of the decedent and consider only the interest of the beneficiaries?
- B. Should the citizenship of the decedent in cases of the above nature have any bearing upon the action taken?
- C. Should we unblock estates being administered in the United States in cases where the only national interest is that of a beneficiary who is a Dutch citizen? If so, should we require that distributions due such beneficiaries be paid to the Dutch Government if they are:
1. Residents of the United States?
 2. Residents of any country except Holland or an enemy country?
 3. Residents of an enemy country?
- D. Should General License No. 30A be amended to require that distributions due Dutch beneficiaries be paid to the Dutch Government?

cc: Messrs. Schmidt, Fox, Bennett,
 Alk, Moskovitz, Richards, Ball,
 Mrs. Shwartz.

D. H. Blake
 Walter M. Day
 J. C. Jones

DHBlake:WMDay:JCJones:cw 4-20-44

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MEMORANDUM FOR THE FILES

June 20, 1944.

Re: Defrosting Problem: Holland
Meeting in office of Orvis Schmidt
on Monday, June 12, 1944.

Present were: Alk, Bennett, Day, Fisher, Fox, Golding,
J.S. Jones, Kossovitz, O'Flaherty, Richards, Schmidt, Smartz
and Sachs.

The discussion was concerned with the following phases
of the Dutch Defrosting problem.

(A) Dual Nationality where there is no
Conflicting Custodial claim.

Consideration was given to the treatment to be given
property beneficially owned by nationals other than Dutch or
enemy nationals, where such property is held in a custodian
account of a Dutch bank in the United States. The question
posed was whether this property should be turned over to the
Dutch.

The following views were expressed: (1) where the
dual nationality is apparent, as long as there appears to be
no enemy interest present, we should deliver to the Dutch;
that where the beneficial owner resides in a non-blocked area,
delivery should be made to the Dutch; no purpose is served by
holding up such transfers for further consideration at a future
date; that where the beneficial ownership is French, and not-
withstanding that we might be entering into some sort of agree-
ment with the French as to French property, we should deliver
to the Dutch; (2) that, aside from securities held in custody
accounts, delivery to the Dutch should take place in the following
type of situations: A corporation organized under the laws
of Holland is partly owned by Dutch, French, and Swiss
interests; and instructions regarding the handling of the
assets of this corporation held in the United States had come
from Holland, in the past or can come from Holland upon the
resumption of communications; in this type of situation it was
suggested that delivery be made to the Dutch and that the French
and Swiss interests straighten out their affairs in Holland;
that where no enemy interest is indicated we should let the Dutch
and the others resolve it among themselves, and the assets should

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go to whichever country is first in the line of succession; that priority in the "line of succession" would mean, for example, that if the funds are held here in the account of a French bank but are beneficially owned by a Dutch national, the funds would go to the French; and where the funds are held here in the account of a Dutch bank but are owned by a French national, the funds would go to the Dutch; (3) that as to the mechanics for making delivery to the Dutch, in those situations where non-Dutch interest is apparent, such delivery should not take place under the General License, but should be handled under special license.

(B) The Reports, if any, which should be required as to the accounts, etc., transferred to the Dutch.

It was suggested that some thought be given to this matter since the set of reports that we now have on the Dutch assets is out of date, and since it might be considered desirable to have some sort of record set up in connection with the transfer; that we ought to think now about what possible uses we might want to make of information and whether we might not want to provide a general rule as to how the information should be set up, what sort of questions we would like them to be able to answer, etc.

The following views were expressed: (1) that the records of the banks in the United States where the accounts are held would be satisfactory should it ever be deemed useful to obtain any detailed data; that the most we would reasonably want is a report as to the total value transferred under the License at the end of a month or every quarter; that any more detailed records should not be required since it is highly improbable that any use will ever be made of it; (2) that the banks should send us a monthly report comparable to the ones they give their customer accounts, which would contain the amount transferred, the name of the account debited, etc., notwithstanding that we might not ever use it, but simply "that we know we have it"; that although the banks here would have the data, it will be scattered throughout their files, and if we should for some reason want to know the amount transferred out of the account of a specific Dutch firm it would be extremely difficult to get it.

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- C. Should Treasury be concerned with the uses that will be made of the transferred dollar assets by the Dutch. Is the Agreement or License the appropriate place to provide for limiting the uses, should any limitation be deemed desirable from the United States Government's point of view.**

An inquiry was raised as to whether, in addition to working out a feasible means of getting the money into Dutch hands and protecting American creditors, etc., we should attempt to define in the Agreement or License the uses to which the Dutch could put the assets transferred, or whether these are questions of more general governmental interest with which we need not be concerned.

The following views were expressed: that an over-all financial settlement will eventually have to be made by this Government with the Dutch, covering such matters as Lend Lease, military occupation and relief costs, etc., but if use of these assets could not be made by the Dutch in the interim, it would be necessary to advance other funds to the Dutch unless we deem the reconstruction of Holland of no concern to us; that as to the argument sometimes advanced that permitting the Dutch, Norwegians, French, etc., to use these funds to compete for goods in our market will contribute to the inflationary tendency, the answer would be that to deprive these people of the privilege means you are treating them unfairly since the Argentines, Colombians, etc., and all the countries that are not blocked, would be able to buy; that the combatting of inflation should be handled by the approach of priorities and export control, etc., whereby anybody who comes into the market to purchase for export, etc., is controlled; that these problems will have to be dealt with elsewhere and not by the freezing control.

- D. Whether the agreement with the Dutch should resolve the question of treatment to be accorded securities or other property owned by an American but physically located in Holland.**

An inquiry was made whether in the subject agreement we should provide that the Dutch should turn over to us securities physically located in Holland and which are owned by an American without the Dutch first investigating to determine whether the American is cloaking for German interests.

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The following views were expressed: (1) that if we are going to turn over securities in this country to the Dutch where they are held by a Dutchman without our making a prior inquiry as to whether a German interest is present we should reciprocally require in the subject agreement that the Dutch turn securities physically located in Holland over to us where held by an American, without their first investigating to determine whether the American is cloaking for German interests; (2) that this inquiry once again brings up the conflicting Custodial problem which is not being resolved now; (3) that outside of the conflicting Custodian problem this inquiry would have significance only if the United States Government were contemplating setting up its own exchange control.

6. Whether fees should be charged the Dutch to cover the expense of operating Foreign Funds Control.

The following views were expressed: (1) that if we said to the Dutch that the work of Foreign Funds Control has served to preserve your funds and in fairness you ought to pay the cost, it will serve only to antagonize and appears unimportant in the light of the adjustments that will have to be made on Lend Lease, etc., (2) that the operational expense should be met by the Dutch; that in this connection and by way of comparison a Custodian would be reimbursed for the cost of administration.

7. Whether we should turn over TFR-300 information to the Dutch Government and to American Creditors.

The following views were expressed:

(1) We should give this information to the Dutch Government after liberation; that we should assist the Dutch to mobilize their assets to promote Dutch reconstruction, and therefore to enforce their exchange control; that many people in Holland will have died and nobody is going to know about these Dutch assets unless we make this information available to the Dutch Government; that in turning this information over to the Dutch Government there is no violation of a confidence reposed by the individuals who filed the TFR-300 reports since these reports were filed "because the law required it".

(2) We should not give this information to the Dutch Government; that the regulations (TFR-300) required the reports for wartime purposes and we can not make it available

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to the Dutch creditors which we would be doing by giving it to the Dutch Government; that these reports were given to the United States Government in confidence.

(3) We should not give this information to American creditors; that the American creditor can always sue the debtor in Holland, which was the position the American creditor had previously been in; that supplying this information to American creditors would not be feasible administratively; that we could not publish in the American papers the list of all persons abroad who have funds here; that we would have to verify whether an inquirer for the information is in fact a creditor, unless turning the information indiscriminately over to any inquirer is to be the procedure.

(4) That if we give this information to the Dutch Government we should give it to the American creditors or require the Dutch Government to agree to give it, or as an alternative provide a scheme whereby if the American creditor files a claim with the Dutch Government within a fixed period of time he will be protected if his Dutch debtor should have assets in this country; that while in most instances the Dutch debtors will be solvent, our handling of this problem via a vis the American creditor must be predicated on the assumption that the Dutch debtor will be insolvent; that for us to provide this information to American creditors we need not publish this information but supply it to any inquirer; that it will be easier to give the information to an American creditor who inquires than to refuse him; that on disputed claims it should be made possible for the American creditor to prosecute his claim here; that the Dutch Government under the transfer arrangements contemplated stands in the place of the Dutch debtor.

cc: Alk, Bennett, Day, Fisher, Fox, Golding, Hoffman, J.S. Jones, Moscovitz, O'Flaherty, Richards, Schmidt, R. Stwarts, and Sacks.

J. Sacks
 JSacks:miv 6/20/44

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MEMORANDUM FOR THE FILES

June 22, 1944

Re: Plan for transfer of Dutch privately owned property to Dutch Government.
Plan contemplating the use of (a) permissive Treasury license authorizing the transfer and (b) "Gentleman's Agreement" binding the Dutch Government to take certain action.

I. Steps which can be accomplished by this plan.

- A. Transfers of any Dutch property to the Dutch Government or its designated agency can be authorized.
- B. The Dutch Government can be required to make appropriate credits to the account of the transferors.
- C. The accounts to which the properties are transferred can be given such designations as may be deemed desirable.
- D. The banking institutions to which funds, securities, etc., are to be transferred may be designated.
- E. Reporting requirements with reference to transfers may be prescribed.
- F. The types of property, and the persons whose property, are to be excluded from the transfer may be designated.
- G. All transfers to the Dutch Government prior to a cut-off date may be prevented and transfers after that date limited to cases where no adverse claims have been asserted by the cut-off date.
- H. The property transferred can continue to be subject to freezing control.
- I. The Treasury Department can retain, or confer upon the Dutch, the authority to receive notices of claim with reference to the properties. The Treasury Department can authorize the Dutch to pay only such claims with reference to the property as it desired.

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- J. The Treasury Department can reserve such authority over the property transferred as it shall deem appropriate in view of actual or potential enemy interests therein; and can request the Netherlands Government to investigate significant holdings to detect possible enemy interests and to permit United States personnel to be attached to such investigations.
- K. The Netherlands Government can be requested to furnish any information with reference to the property taken over pursuant to the License or with reference to United States property subject to Netherlands jurisdiction which may be desired.
- L. The Netherlands Government can be requested to make the specific guarantees desired to assure that United States persons will be treated by the Netherlands on a most-favored-nation basis so far as the Dutch exchange control is concerned; and to assure that funds will be retained within the United States for payment of United States claims.
- M. The Netherlands Government may be committed to such limitations upon its rights to sovereign immunity as may be deemed appropriate.
- N. The Netherlands Government could be committed to a program relative to the post-war handling of United States property which has been seized by the enemy in Netherlands territory.
- O. The type of management exercised by the Netherlands Government over business enterprises, real estate, etc., within the United States could be controlled.
- P. The Netherlands Government could be required to pay fees to the United States in reimbursement of freezing control expenses.

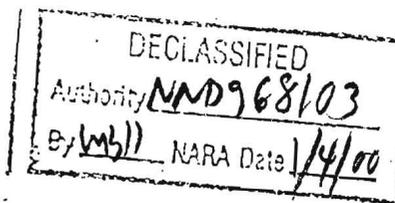
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11. Steps which it is not clear can be accomplished by the plan of a permissive license coupled with a "Gentlemen's agreement". It is not clear that this plan can override any provision of existing United States law which impinges upon Netherlands property within the United States. Specifically, it is considered quite unlikely that the plan would permit of any of the following courses of action:

- A. Alterations of preferences as they would exist but for freezing control. Thus, under the plan it might not be possible to effect preferences under criteria which have been discussed. For example, it might not be possible to prefer those who hold dollar obligations; or the holders of obligations arising by virtue of transactions which took place within the United States or not with reference to property within the United States; or residents of the United States, etc.
- B. The payment of a creditor making a claim with reference to a particular property after the time that the property has been attached or garnished or involved in interpleader, or similar proceedings, by any other person whose action has not been dismissed or satisfied.
- C. The transfer to the Netherlands Government of any property which has been attached or garnished or involved in interpleader, or similar proceedings at the instance of a third party prior to the date of such transfer. The potential scope of this problem is illustrated by the following points:
 - (1) Generally speaking any ownership claimant and any holder of a creditor's claim would be free to institute attachment or similar proceedings prior to the surrender to the Dutch Government.

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- (2) The transfer to the Netherlands Government of any property would be prevented if the United States depository holding the property had any legal doubt with respect to the validity of the transfer and for its own protection had instituted proceedings in the nature of interpleader. Such doubt might arise, for example, in cases of the following types:
- (a) In most, if not all, cases where the Netherlands Government may seek to invoke its foreign exchange decrees without having required the resident whose property is affected to grant a pay order to the Dutch Government over the account in question, it seems rather clear that the United States depository would be compelled for purposes of self-protection to institute interpleader litigation.
- (b) In addition, cases will arise involving situations such as the following: (i) the Dutch Government seeks to assert rights to the exclusion of a United States agent having management authority over the property for the Dutch resident; or (ii) the Dutch Government seeks to assert rights to the exclusion of the right of the state in which the property is situated to follow its normal practice of appointing a-a agent over the property for the Dutch resident; or (iii) the Dutch Government opposes the right of a Netherlands citizen to evade the control of his country by placing his property under the control of a United States fiduciary with authority in the latter to withhold distribution of the property, except

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free of the Dutch control.

On the basis of recent court decisions and in the absence of applicable provisions of a treaty or executive agreement, it seems quite certain that a United States depository will not without order of court surrender property to the Dutch Government in cases of any of these types.

- (c) The problems resulting from (a) and (b) will be aggravated because the Netherlands Government will presumably be unable to operate pursuant to a new foreign exchange decree until it is restored to its territory and the new decree enacted pursuant to the regularly constituted legislative organs of the Netherlands Government. The problems resulting from (a) and (b) are further aggravated by the fact that attachments, garnishments, and other actions which may tie up the Netherlands property can continue to be instituted, up until the date when the properties are actually transferred to the account of the Netherlands Government, and perhaps in some cases after that date. It is far from clear whether a foreign government which issues a decree taking property of its nationals will be able to assert a claim of sovereign immunity ^{1/} until either the owner of the property recognizes or consents to the transfer to the government or the property is paid over to the government pursuant to court order. The Netherlands

^{also}
 1/ It is not clear whether such foreign government is a necessary party to actions involving such property.

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Royal Decree of May 24, 1940 has limited effect in preventing these complications, in view of the fact that no clear recognition has been accorded to it by the United States except for the purpose of preventing the acquisition of interests or control by persons within Netherlands territory who at the time their claims are asserted are not citizens of the United States.

- (3) In the proposed General License which follows we have included a provision authorizing thereunder no transfer of properties with respect to which claims have been filed prior to a specified cut-off date except where such claims are filed by Dutch residents who are not United States citizens or organizations owned or controlled predominantly thereby.

However, we submit that under the permissive license approach, there is no way to take care of creditors' claims except under conditions resulting from judicial consideration of two issues. The first of these is whether the transfer to the Dutch Government of the property with respect to which the creditor's claim has been asserted may be affected; and second, whether the classification of preferred creditors sought to be applied under the terms of the "Gentlemen's Agreement" will be substantiated.

While both these problems will exist also if there is an executive agreement, legislation or a treaty, treatment of the problems of creditors' claims by one of these three techniques, would it is submitted, be effective to dispose of both of these problems without protracted litigation.

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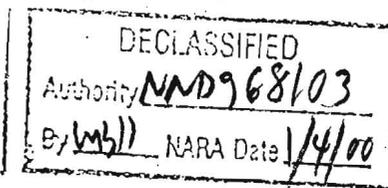
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CONCLUSION:

From the foregoing it would appear certain that under a permissive General License and "Gentlemen's Agreement" the Dutch Government would be assured of getting, without litigation, only those properties which are transferred to the Dutch Government by order of the owner; and then, only if no adverse claim of creditors had been asserted by court proceedings prior to the transfer.

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MEMORANDUM FOR THE FILES

File Defrosting
 July 13, 1944

Following the collapse of Germany and the cessation of hostilities in Europe there will undoubtedly be strong diplomatic pressure by the European neutral countries to lift the freezing controls in respect to their assets in and transactions with the United States. It seems probable that the strongest pressure of this nature will be exerted in respect to Swiss assets. It seems equally clear that in respect to the European neutrals the problem of greatest magnitude and importance will be in connection with assets in and transactions with the United States of Swiss nationals.

It is well known that the Swiss Government and Central Bank have declined, with only infrequent minor exceptions, to certify transactions under the Swiss general license, other than transactions for government account. Up to the present the Swiss have declined to avoid the restrictions imposed on security transactions by General Ruling No. 17, by appropriate certification under the Swiss general license. The Swiss have explained this refusal primarily on the grounds of the magnitude of the problem involved and their manpower shortage due to military mobilization, etc.

To minimize the prospect of a complete lifting of freezing controls in respect to Swiss assets and transactions, due to successful diplomatic pressure, not only in respect to those types which we would have no objection to being lifted out of the freezing controls but also those types which we feel should continue to be subject to freezing controls for some further period of time (such as assets in which there is an interest of an enemy or possibly an occupied country national), it is felt desirable to indicate now to the Swiss the probable general nature of our controls following the cessation of hostilities in Europe, and the general policies which this Department now feels disposed to follow at that time in respect to Swiss transactions and assets. This would be in accord with similar general indications, during the latter part of 1943 and the early months of 1944, of Treasury attitude toward the use by reestablished recognized governments in the liberated areas of assets within the United States owned by nationals of such countries. (In this connection, see memoranda dated October 14, 1943, November 2, 1943, November 4, 1943, December 10, 1943, December 20, 1943, January 20, 1944.) An ancillary consideration that should be kept in mind is that failure to take prompt and reasonable action in respect to facilitating non-objectionable dollar transactions following the cessation of hostilities in Europe will have a strong tendency to drive the handling of international trade and financial operations away from our dollar facilities toward direct or other triangular channels to the detriment of our national interests.

Accordingly, it is suggested, as a basis for further discussion, that consideration be given now to advising the Swiss at an early date that following the cessation of hostilities in Europe it is presently the intention of Treasury to remove from the prohibitions of the freezing controls those assets within the United States blocked only as Swiss and in respect to which neither we nor the holders thereof have any information indicating an interest therein of a blocked national other than Swiss (or possibly of a Swiss and European neutral or person in a blocked country in the Generally Licensed Trade Area), after the Swiss Government or Central Bank, or other appropriate government agency, has certified that such assets are owned beneficially only by Swiss (or more broadly as indicated above). One method of effecting this general result would be to designate the accounts in which such assets are held, following appropriate certification by the Swiss, as the accounts of generally licensed nationals. Concurrently, Switzerland (and the other European neutrals) would be included in a general license similar to General

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License No. 53 which would permit trade transactions with the United States and with countries within the Generally Licensed Trade Area, provided such transactions were effected through accounts appropriately certified as indicated above. This procedure would have the effect of removing from our controls most trade transactions of a satisfactory nature, and release, after certification, those accounts in the United States from freezing restrictions in respect to which by that time we would have but little significant interest. For remittance purposes, accounts of banking institutions in Switzerland, so certified by the Swiss, would be deemed to be blocked accounts for the purposes of General Licenses No. 32 and 33, and any other appropriate general licenses (presumably General License No. 1 and possibly General License No. 72, etc.)

Coupled with this might be the prior step of directing the transfer of all unidentified and uncertified (pursuant to General Ruling No. 17) balances and securities held in Swiss blocked accounts to General Ruling No. 6 accounts and the concurrent revocation of General Ruling No. 17.

It is felt that indicating to the Swiss now our attitude toward purely Swiss assets and transactions following the cessation of hostilities in Europe, and the procedures by which relative freedom from our freezing controls could be obtained, would to a substantial extent deflate potential Swiss diplomatic pressure to lift all our controls in respect to all assets held here nominally or beneficially in Swiss names, and prevent the Swiss from raising at a later and possibly inconvenient date manpower shortage, inconvenience, or dislike of procedure, etc.

It is felt that the freezing control problem in this general respect is primarily with the Swiss and that any agreed on approach should first be made to them. Following such discussions with the Swiss and in the light of developments therefrom, similar discussions could be had with other European neutrals.

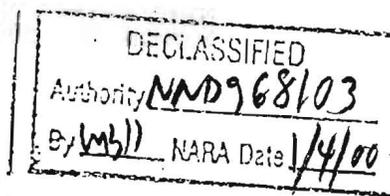
A. U. Fox

cc: Messrs. Fehle, Schmidt, Richards, R. Schwartz, Luxford, Alk, Moscovitz, Glasser, Fisher, Bennett, Day, Blake, J. U. Jones, O'Flaherty

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MEMORANDUM FOR THE FILES

December 10, 1943

There was a conference held in my office today at which the following were present:

For the Belgian Government

Finance Minister Gutt
 Baron de Gruben
 Mr. Ansiaux

For the Treasury Department

Mr. E. M. Bernstein
 Mr. Luxford
 Mr. Pehle

Mr. Gutt referred to the conversations which the Treasury had had with Baron de Gruben and Baron Boel with regard to the unfreezing of Belgian assets and said that he would like to renew these discussions. Mr. Gutt mentioned that in May of this year he had discussed this question in a general way with Mr. White who had indicated that from a technical point of view there was no reason why the controls of this Government over Belgian assets should be continued after the war; Gutt subsequently mentioned this to Acheson who said he was in agreement. It was then pointed out that we had already indicated that upon the liberation of Belgium, and the establishment of a recognized Belgian Government in the area, the Treasury assumed that the assets of the Belgian Government, and of its nationals in Belgium, would be available for appropriate Belgian uses, such as the plans of UNRRA. At this point we mentioned two problems the Treasury anticipated coming up at that time, as follows:

(1) Certain assets held in Belgian names will be found to belong not to Belgian nationals but to Germans or other enemies, and the problem will have to be resolved as to whether such assets should be made available to Belgium or to the United States. On this point Mr. Gutt said that he recognized the problem and was willing, on behalf of his Government, to enter into an agreement whereby any assets released to the Belgian Government which later turned out to be German and which, according to the peace treaty or other undertaking between the interested governments, were assets to be dealt with by the United States, would be turned over to the United States or replaced by assets of comparable value. In this connection Mr. Gutt said that his Government planned to sequester enemy assets within Belgium for the benefit of the Belgian state, but that creditors who have a lien on specific assets or have a claim against specific assets would be paid from such assets.

(2) The problem of American creditors of Belgian debtors was discussed. Mr. Gutt conceded that American creditors who had attachments or judgments should be paid out of the attached funds and that he was perfectly agreeable to any other creditors having claims against specific

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assets, attaching such assets. With regard to Belgian debtors who had no assets in the United States Mr. Gutt said that if the debtor was found to be insolvent the Belgian Government should have no responsibility. On the other hand, Belgian debtors who have Belgian currency should be provided with transfer facilities to pay their American creditors. Mr. Gutt stated categorically that his Government was willing to enter into an agreement on this point (and, if necessary, to leave enough Belgian assets in the United States to provide adequate transfer facilities) for the payment of commercial debts owing to United States creditors, as well as to convert into dollars Belgian franc bank deposits held by Americans.

At this point there was some discussion of the possibility of the controls of the United States being modified in such a way as to be ancillary to the controls to be set up by the Belgian Government. Mr. Ansiaux described the controls which the Belgian Government is envisaging and said that it was intended that the Belgian Government would impose immediately very strict and broad exchange controls which would require all Belgians to report their foreign exchange assets (as well as all their assets in Belgium) to the Belgian Government; and all foreign exchange transactions would be prohibited, except with the approval of the National Bank of Belgium which would manage the exchange controls. Later, it was envisaged, the five or six largest banks in Belgium would be allowed to act as foreign exchange dealers on behalf of the National bank. Mr. Ansiaux indicated that the Belgian exchange controls would be used for monetary, financial, economic and political purposes, including within the political purposes the function of preventing trade with the enemy.

There was some discussion of the Treasury's issuing licenses comparable to the licenses issued in connection with Belgian Congo transactions. Such licenses would permit the assets of persons and institutions in Belgium to be transferred to the National Bank and would allow assets held by the National Bank to be freely disposed of. It was made clear to Mr. Gutt, however, that the Treasury representatives were merely expressing their views as to what course of action would be taken and were not attempting to commit the Treasury, either as to what extent our controls would be lifted or to continuing supplementary controls. With regard to Belgian business enterprises operating in the United States, it was indicated that one approach would be to give the Belgian Government a list of such enterprises and to issue general licenses to those enterprises recommended by the Belgian Government. With regard to Belgian citizens residing outside of Belgium, it was indicated that except with regard to persons against whom there was evidence of an unsatisfactory character, this Government would probably not be willing to require the approval of the Belgian Government before releasing, but at that point would treat the Belgian nationals residing in Mexico, for example, just as other nationals of Mexico.

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Baron de Gruba pressed for a written agreement by the Treasury on the points discussed. We pointed out that while we had been glad to indicate our views and the Treasury policy in such matters as we knew it, a written agreement, which must necessarily envisage a host of different hypothetical situations, would invariably contain all manner of conditions and stipulations. We also indicated that preparing such an agreement would be very time-consuming. Mr. Gutt seemed to be sympathetic with the Treasury's position.

(Signed) J. W. Pehle

CC: Messrs. Paul, White, E.M. Bernstein, Taylor, Luxford, DuBois, Lesser, Schmidt, Fox, Miss Hodel.

JWPehle:rg 12-11-43

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COPY

TREASURY DEPARTMENT
 Inter Office Communication

Date December 20, 1943

TO Mr. Pehle
 FROM Mr. White

/s/ HDW

I have read the report of the conference held in your office on December 10, 1943 with the representatives of the Belgian Government. I, as you know, am in complete accord with your views as expressed at that conference. However, I want to correct what appears to be a misunderstanding or misrepresentation of the expression of my views to Finance Minister Gutt as described by him to you according to your account. I am taking this way of calling it to your attention so the record shall be perfectly clear. In discussing this matter sometime ago with Mr. Gutt, and in other discussions with representatives of other Exiled Governments, I have always taken the position when the question was raised by them as to the unfreezing of their assets in this country that the funds were not frozen for monetary reasons in the sense that it was not that we lacked gold or foreign exchange resources or feared in any way any drain of such resources. Nor, after the war in the formulation of a decision as to the time of the unfreezing of these balances would monetary considerations play a role. In the postwar period we would be happy to see them withdraw their balances as rapidly as they could. There remained, however, political considerations and questions of claims and counterclaims which obviously no one was in a position to appraise at this time and which might delay or modify a complete unfreezing of funds in this country. I added that it was my judgment that friendly governments would have no trouble after the war to obtain needed portions of their dollar or gold balances here.

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January 20, 1944.

MEMORANDUM FOR THE FILES:

Re: Conversation with Dr. Riemens,
Financial Attache, Netherlands Embassy.

Dr. Riemens dropped in to advise me that his government has been working on plans for handling the problems which will confront them when they get back into Holland, and that they have now decided that one of their first steps will be to adopt a foreign exchange control and issue a decree compelling all persons in the Netherlands to transfer all foreign exchange assets held by them outside the Netherlands to some central institution. Of special interest was his indication that they also intend to revoke the decree presently outstanding with respect to Dutch foreign assets. It was not clear as to whether the revocation of the present decree would precede the issuance of the new regulations but Riemens stated that they assume that the present decree will have little validity with respect to payment orders coming from Holland once communication from Holland becomes possible.

I asked Dr. Riemens whether he could give me any indication as to what plans they were making to untangle the transfers of ownership of Dutch companies and other property within the Netherlands during the occupation. He indicated that it was a very difficult problem but that they were planning to force all owners of Dutch securities to bring in the securities for registration and validation and trading in all securities would be suspended until such validation had taken place. He indicated that their problem was made somewhat easier by the fact that there was very little foreign ownership of Dutch companies prior to the war. The participation in the Dutch trusts was also almost entirely local so that any foreigners owning Dutch trust certificates would be suspect. The Netherlands Government in exile is also planning a vigorous excess profits tax to take away all profits made during the period of enemy occupation. They are planning, of course, to bring criminal action against people who collaborated with the enemy and the profits tax is to be general and apply to all persons who have profited substantially during the period of occupation.

Dr. Riemens indicated that his government would like to have the freezing control remain in effect with respect to Dutch assets as they fully appreciate the strength of interlocking controls. They are hoping that a general license may be issued authorizing the transfer of Dutch assets into their central account. He indicated that they had been very pleased with the operation of this plan in the Dutch East Indies prior to their occupation. I raised a question as to the position of American creditors and Dr. Riemens said they were fully aware of those problems and are, of course, preparing to allow Americans to be fully paid. Persons who have received judgment would either be permitted to be paid or if it were a default judgment the owner would be free to come into court and

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contest the judgment. The Netherlands Government is planning to maintain a delegation of representatives in the United States during the initial period in order to work out the problems that will inevitably arise.

I told Dr. Riensma we were interested in learning about the plans of this character that were being made by his Government. He said he appreciated this, would keep us advised, and as soon as any decrees were drafted he would send us a translation.

O. A. Schmidt

cc: Messrs. Taylor, Luxford, Fox, Richards and Mrs. Schwartz

GAS:1hh 1/20/44

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MEMORANDUM FOR THE FILES

July 10, 1944

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Subject: Discussion with Baron de Gruben, Counselor of the Belgian Embassy, at Bretton Woods.

Baron de Gruben said that he was thinking of having the various blocked countries get together and introduce, in Commission III, a resolution relating to the lifting of Foreign Funds Control and asked my opinion as to the desirability of such a step. I told the Baron that I felt it would be undesirable to raise the problem at the Conference inasmuch as it would not be of interest to most of the governments represented and that it would be simpler for us to sit down and have a talk about the matter.

Subsequently, I had a discussion with Baron de Gruben about the basic problem. He indicated that in the understanding of his government the freezing controls were applied to Belgium as a wartime measure and to protect the interests of both the United States and Belgian nationals. Accordingly, they would like to be able to assume that the controls would be removed as soon as possible after the cessation of hostilities in Europe. I indicated to Baron de Gruben that those persons in Treasury who work on such matters were thinking in terms of lifting the freezing controls as soon after the cessation of hostilities as they could be safely removed. I pointed out that we were presently engaged in canvassing the problems that would confront us at the time steps are taken to remove the controls and that they seemed to fall into the following general areas: (1) the problem of preventing the effectuation of transfers made under duress while the country was occupied and which could not now be effected by virtue of the freezing control; (2) the general problem of protecting American creditors; (3) the discovery of property being held in the United States through persons or institutions within Belgium by persons within enemy territory, and the determination as to the disposition to be made of such property.

With respect to No. 3, Baron de Gruben expressed his opinion that the amount of such property would be very small. He stated that one of the first acts of the new Belgian government would be to appoint an enemy property custodian which would ferret out and vest all enemy property held in Belgium. He was sure that the Belgian government would make available to us any information concerning property held in the United States through Belgium on behalf of the enemy and would agree that the disposition of such property should be in accordance with any set of rules that might be agreed on between ourselves and his government.

With respect to the problem of protecting American creditors, Baron de Gruben said that he was authorized to tell me that his government would undertake to make foreign exchange available to persons in Belgium for the purpose of paying their foreign debtors. He also indicated that they wanted to be able to allow foreigners holding funds in Belgium perfect freedom to withdraw those funds, since such business had been lucrative and they wanted

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to encourage people to continue to hold their assets in Belgium after the war. In this connection, he expressed the hope that the administration of the freezing controls in the United States would not prevent or unduly interfere with the ability of Belgian banks to allow non-enemy foreigners, who had deposited funds with them, to withdraw their deposits.

As to the problem of preventing the effectuation of transfers that had been made under duress, Baron de Gruben agreed that it was a difficult problem and one to which his government would have to give some serious attention.

In response to questions as to the general nature of the plans of the Belgian government, Baron de Gruben indicated that they did not want to transfer assets held by persons or firms in Belgium into any one central institution, but insofar as the government was concerned it would allow the funds to remain in status quo. He indicated that this matter had been discussed with the Belgian Central bank authorities, who felt there would be too much bookkeeping involved in transferring all the assets to a central institution. The Baron indicated that their plans were for an arrangement somewhat of the nature of the Swedish general license which would authorize transfers from blocked Belgian accounts upon the certification of representatives of the Belgian foreign exchange control. He foresaw the administrative difficulty of having all transfers specifically reviewed but felt that possibly some short cuts could be adopted to handle the small transfers. I told the Baron that we would examine the feasibility of this approach.

In closing, the Baron asked whether it would be desirable to have some exchange of notes between the Belgian government and the United States Treasury with respect to this matter. I discouraged this idea, pointing out that anything put in writing would have to be subject to numerous qualifications, and the problem of getting out a mutually satisfactory statement would be difficult and time-consuming. I suggested that if he wanted to write a memorandum concerning our conversation there was, of course, no objection and should he care to do so he could make available to us a copy of his memorandum. I also suggested that as the Belgian government formulated its plans it might care to send to us, on an informal basis, copies of the decrees or other documents which they propose to issue, and that each of us might thus be able to take into consideration the general character of the plans being made by the other.

(Signed) Orvis A. Schmidt

Orvis A. Schmidt

CC: Fox, Bennett, Day, Shwartz, Sachs, Richards, Alk, Moskowitz, Luxford, Norman Davis, O'Flaherty, Golding, Blake, Jones, Fisher, Hoffman, Ball.

OASchmidt:rg 8-4-44

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By mbj NARA Date 1/4/00

FOREIGN FUNDS CONTROL

To: Mr. Richards 605 Stone
(1) (Room) (Bldg.)
(2) (Room) (Bldg.)
(3) (Room) (Bldg.)

This memorandum is to be considered in connection with the memorandum of August 14, 1944 entitled "Outline of Plan for Effecting Transfer of Blocked Privately Owned Assets to Friendly Governments of Areas Formerly Enemy Occupied".

From: E. D. Golding 8-17-44
(Date)
..... (Room) (Bldg.)

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August 17, 1944

MEMORANDUM

Factual background and argument on certain major controversial issues covered in the memorandum of August 14, 1944 with regard to unfreezing of liberated areas

1. The use of unblocking as a bargaining device

(a) While all the enemy-occupied countries are blocked, there is tremendous variation, country to country, in the amount of blocked property within the United States and in the need for foreign exchange. This fact, like past statements with regard to the protective function of Foreign Funds Control, casts grave doubt on the fairness of using unblocking technique as a method for securing agreements from different countries on matters unrelated to the purposes of Foreign Funds Control.

(b) So far as known, the continuation of Foreign Funds Control will not be necessitated by any needs of the United States in the post-war period for foreign exchange or to prevent flight of capital.

(c) Unblocking technique could constitute a powerful aspect of this government's post-war negotiations with the few countries having large blocked balances.

2. The question of enemy property

(a) The President has established a definition of a "national of a designated enemy country" in Executive Order No. 9193.

(b) In the conflicting custodian proposals, "real enemy" property is defined and excluded from the terms of the agreement which has been proposed by the Treasury. The purpose of this exclusion is to withhold "real enemy" property from foreign Alien Property Custodians pending the further determinations of the United States Government.

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(c) The legislation proposed by the Alien Property Custodian establishes a class of "real enemies" whose property, if vested by the Custodian, could not be returned under the proposed legislation without further act of Congress.

(d) Any requirement that a friendly government of a liberated area must certify that there is no enemy interest in property prior to taking control of such property under its foreign exchange control decree would impose immediate and potentially heavy burdens on any friendly government concerned.

(e) There is little, if any, basis at the present juncture for comparing the merits of the ultimate policy of the United States with reference to enemy property with that which may be followed by the governments of liberated areas. It should be noted, however, that certain of these governments have recorded the intention of vesting all enemy property, within or without their territories, which is in any way under their jurisdiction.

(f) The legal rights which the United States may ultimately wish to assert over enemy property may be preserved by excluding from property transferred to any foreign government all property in which there is a "real enemy" interest; therefore, to require the foreign government to make a prior certification of lack of enemy interest is not necessary to preserve the technical legal rights of the United States with regard to real enemy property.

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(g) The program for releasing foreign exchange assets to liberated areas may, and it is believed will, be initiated without prior settlement of enemy property questions.

(h) The voice which the Treasury Department ultimately has in the settlement of "real enemy" property questions may be limited.

(i) It cannot now be foreseen that conditions in the post-war world will permit of an extensive Treasury program for ferreting out, or disposing of, enemy property; and the purposes to be achieved from such a program, in a monetary sense, are not wholly apparent. (Exceptional cases may, however, arise where because of size, importance of holdings, or political affiliations of the owners, Treasury may wish to take definite action.)

(j) The need of the liberated areas for foreign exchange may be great in comparison with their foreign exchange assets. It might be desirable that the claims of this government to enemy property be tempered in the light of this need.

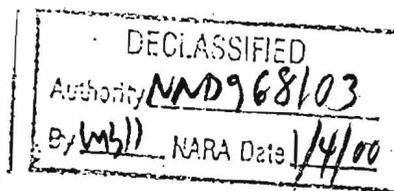
(k) Numerous proposals have been pending in Congress for the confiscation of enemy property and the use of such property to pay United States claims; however, the chance that such proposals will be enacted must be weighed in the light of the opposition by the Chamber of Commerce of the United States, the American Bar Association, and the Foreign Trade Council to confiscation of enemy property.

3. The question of United States creditors

(a) A considerable number of United States creditors received satisfaction, and perhaps preference, pursuant to the "pre-war" licenses issued by Foreign Funds Control.

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(b) Without any affirmative action by Foreign Funds Control, the rules of law normally applicable in litigation tend to give preference to United States creditors in many situations.

(c) United States creditors should receive protection to the extent of assets of their debtors found by them within the United States; and claims of United States creditors to assets of their debtors in the liberated areas should receive as great respect from the liberated area governments as claims of nationals of the most favored foreign nation. The desirability of reserving greater rights for United States creditors seems questionable, particularly in view of the needs of the liberated areas for foreign exchange. Furthermore, it can always be argued, if desired, that the specific guarantees of payment in free funds at the residence of the creditor which are being exacted by the British will insure to the benefit of United States creditors under the most favored nation clause.

(d) While there may be inequities in the operation of rules of law with regard to creditor preferences, there has been no pressure upon Foreign Funds Control to remedy such inequities.

(e) It may be desirable, ultimately, to take the position that the persons who have attached a given fund prior to a given date shall not have their priorities with respect to the fund affected (1) by reason of various times when they attached; or (2) by reason of the various times when they applied for Treasury licenses; or (3) by reason of the different lengths of time that their applications remained in Foreign Funds Control. These problems are important problems which

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must be faced in view of the provisions of General Ruling No. 12. They are, however, in a sense peripheral to the main problem of releasing foreign exchange assets to governments of liberated areas, and decisions on these problems need not be reached at the present time.

(f) There will be no effort affirmatively to assist United States creditors in locating property of their debtors.

(g) There will be considerable difficulty after liberation in withholding information of our policy on disposition of attachment cases until after a judgment is secured; many persons will expect rather definite indications of Treasury policy before prosecuting expensive litigation to final judgment.

(h) The ability of Foreign Funds Control to alter rights of claimants, or procedures for satisfying their claims, is questionable since any techniques which may be instituted for these purposes might violate expectations of the public and interfere with rights retroactively.

4. The question of false claims

(a) After liberation the function of protecting persons in liberated areas against false claims to property should rest primarily upon the governments of those areas. This is true, particularly, as it is contemplated that no fees will be charged for the administration of Foreign Funds Control.

(b) The Treasury Department should preserve property of nationals of liberated areas until the nationals of those areas and any governments or persons having any right to represent them have had reasonable opportunity to interpose defenses and, possibly, to object to satisfaction of default judgments.

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5. The question of property nominally owned by a non-enemy who resides in one country and beneficially owned by a non-enemy who resides in another country

In the absence of requests from any person, other than Mr. McCombe of the British Embassy, that cognizance be taken of the problem, it is not clear that the United States has any interest in reserving for future consideration those cases where property nominally owned by a non-enemy who resides in one liberated area is beneficially owned by a non-enemy who resides in another liberated area. This point may, however, be raised by governments of certain of the poorer countries, and it is for this reason, among others, that discussion of the proposed plan with the various countries may be desirable.

6. The question of deceased or disappeared owners

The United States depository will doubtless place in litigation most, if not all, cases in which the foreign government is unable to obtain an assignment from the nominal owner of the property. In view of this fact, the license as proposed in the memorandum of August 14, 1944 will necessarily result in focusing upon these cases on a case by case basis. For this reason, the general license proposed need not specifically deal with the problem of deceased or disappeared owners.

7. The question of generally licensing payments involving central bank accounts in which funds of liberated areas have been centralized

(a) It may be undesirable to grant general licenses to liberated area governments of a scope broader than that accorded the blocked European neutral countries.

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(b) It may be undesirable and unnecessary to grant broad general licenses to liberated area governments pending termination of United States foreign trade control and domestic price and allocations controls. These controls are reinforced by Foreign Funds Control, and Foreign Funds Control is actually the sole control on, for example, trade between Argentina and the liberated areas which is financed through the United States.

(c) It may be undesirable to grant broad general licenses to liberated area governments pending the ultimate solution of enemy property problems.

(d) It may be undesirable to grant broad general licenses to liberated area governments pending general restoration of communications and an opportunity for expression of views by recognized governments of all of the areas which formerly were enemy-occupied with respect to property beneficially owned by their residents though held nominally by banking institutions in other areas.

(e) Existing notification procedures, modified, possibly, by inserting amount limitations based upon the needs of the country concerned for foreign exchange in the immediate future might be adequate to handle problems as they arise prior to general termination of hostilities and resumption of private trade.

8. The question of encouraging centralization of assets

The Netherlands Government proposes to centralize foreign exchange assets of its nationals in accounts designated by the Netherlands Government. The Belgian Government, because of technical difficulties,

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tentatively favors leaving assets in status quo. The plan which is proposed in the memorandum which was circulated contemplates centralization. In this connection, the following considerations may be pertinent:

(a) Centralization of foreign exchange assets in governmental accounts may give added assurances that enemy interests will be purged.

(b) Centralization of foreign exchange assets in governmental accounts would simplify the task of Foreign Funds Control inasmuch as the nationality of, and facts with regard to, the owner of the property would cease to be an element to be considered in licensing particular transactions.

(c) Centralization of foreign exchange assets in governmental accounts need not prejudice the ultimate rights of the United States with regard to "real enemy" property.

9. The question of interchanging FFR-300 and/or FFR-500 information with governments of the liberated areas

In this connection, attention is directed to Mr. Heffman's memorandum to Mr. Glasser dated July 12, 1944 and to Mr. Winkoff's memorandum to Mr. Luxford dated August 21, 1943. Attention is also directed to the following considerations:

(a) Our decision to release the information to the British and the Canadians was motivated by a direct and real need, viz. the desire to reduce Lend-Lease expenditures. That our decision was justified is indicated by the fact that the British have expended virtually all their foreign exchange balances within the United States.

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(b) The TFR-300 and TFR-500 information given to this government was given in confidence and in instances upon the understanding that it was wanted for Foreign Funds Control purposes.

(c) It is not apparent that the TFR-300 information will serve any useful purpose to many of the governments.

(d) Much of the information concerning United States enterprises in the enemy-occupied areas can be obtained by our forces as the areas are re-occupied.

(e) The Administrative Procedure Bill introduced in the Congress by the American Bar Association would make it illegal for information obtained for one purpose of this government to be used for other purposes by this government. It would seem particularly clear, therefore, that there may be political objections to making confidential information available to a foreign government.

(f) We are in a sufficiently strong position to request governments of the enemy-occupied areas to give us the information we clearly need without having to make information available to such governments on an overall basis.

(g) Since unlike the British, we have vested very little property belonging to persons in the enemy-occupied areas, and since there is public notice through the Federal Register of all of the vested property, it cannot be said that the United States Government has participated in or facilitated any concealment of assets belonging to foreign nationals.

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(h) We can always give the TFR-300 information in specific cases when it transpires that there is some apparent necessity for a government to have the information to obtain needed foreign exchange.

(i) It is not felt that we could justify any giving of TFR-300 information which might put the foreign country in a better position to enforce its exchange control against United States citizens than against nationals of other areas.

(j) The government of the liberated area will, it is believed, have sufficient power to operate effectively without the necessity for any surrender to it of confidential information gathered by this Department.

cc: Schmidt, Aik, Bennett, Blake, ~~N. Davis~~, Day, Fisher, Golding,
 J.G. Jones, Moskowitz, O'Flaherty, Richards, Sachs, R. Schwartz
 Luxford, Thorson

EDGolding:sk 8-17-44

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FOREIGN FUNDS CONTROL

July 25, 1944

Mr. Richards:

The attached was handed to me at Bretton Woods by Ricmans of the Netherlands Embassy, who said it represented their general ideas and that they might like to discuss it with us after they returned to Washington.

O. A. Schmidt

cc: Messrs. Fox, Bennett, Day, Mrs. Shwartz, Sachs, Richards, Alk, Moskovits, Luxford, H. Davis, O'Flaherty, Golding, Blake, Jones, Fisher, Hoffman, Ball.

O. A. SCHMIDT

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File Defrozing

Tentative Basis for Lifting of the Freezing Orders
and the Treatment of Enemy Property

1. Upon the liberation of the Netherlands and the subsequent establishment of a Netherlands Exchange Control or a similar authority, the United States Treasury Department will authorize by way of general licenses all transfers of assets to accounts in the name of one or more Ad Hoc institutions or authorized banks, in accordance with the provisions of Netherlands Exchange Control legislation and the aforementioned accounts will be exempted from the freezing orders. After a short period of time there will then only remain two types of accounts subject to the freezing orders, namely, accounts of Netherlands nationals who have refused to comply with the Netherlands Exchange Control provisions and accounts of Netherlands nationals who have died or disappeared and whose estates are not yet administered. Arrangement should be worked out between the U.S. and the Netherlands government with reference to accounts of lost persons. After this problem has been settled the freezing decree could cease to be operative with respect to any assets held by residents of the European territory of the Netherlands.
2. The Netherlands Government will agree to facilitate settlement of bona fide claims of residents of the United States against Netherlands debtors.
3. Immediately upon the restoration of the Netherlands civil administration, enemy property legislation will be enacted. The enemy property legislation will cover both property held in the Netherlands and property held abroad in Netherlands names. The Netherlands authorities would give the United States full information with respect to enemy-owned assets held in the United States and subject to Netherlands enemy-property legislation. Title to property found to be enemy-owned will vest in the State of the Netherlands.
4. Property held in the United States and subject to Netherlands enemy property legislation with the exception of property, title to which has heretofore been

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vested in the APC., will be administered by the Netherlands Custodian of enemy property. The A.F.C. will continue to administer property vested in him. This arrangement will be without prejudice to the ultimate rights of United States and Netherlands governments to the property thus administered.

5. As soon as it is practicable the governments of the United States and the Netherlands will open negotiations looking towards definite arrangement with respect to property held either in the United States or in the Netherlands to which both governments lay claim on the basis of their respective enemy property legislation. The authorities of both countries should agree that bona fide claims of the nationals of one country against enemy property administered by the authorities of the other country will be respected.

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 August 14, 1944
This is being revised

MEMORANDUM FOR THE FILES

Subject: Outline of Plan for Effecting Transfer of Blocked Privately Owned Assets to Friendly Governments of Areas Formerly Enemy Occupied 8-10-44

I. Introduction

The purpose of this memorandum is to present a statement of basic principles and an outline of a proposed plan to be followed by Foreign Funds Control in cooperation with friendly governments of areas formerly enemy occupied which have instituted foreign exchange control decrees that centralize the foreign assets of their nationals. The plan herein proposed contemplates the issuance of a general license for each friendly liberated country, and an informal or "gentleman's agreement", in writing, with the government of each such country.

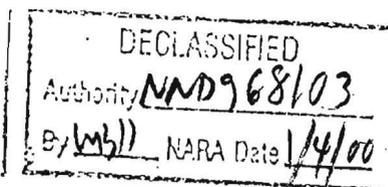
It has been assumed that this government will not, in general, wish to use the freezing control as a lever to force other governments to agree to plans or ideas of this government not directly concerned with our freezing controls.

II. Basic Principles

A. Recognition of Post-Liberation Government

Before any transfer of assets to the government of the liberated area is authorized, all or a substantial part of the area should be liberated and a government recognized by the United States should be in control in the area. (If the recognized government of a liberated area presses a clearly demonstrable need for funds prior to the fulfillment of these conditions, the Treasury Department could act on an *ad hoc* basis.)

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B. Restoration of Commercial Communications

Commercial communications between the United States and the area should be restored before (1) there is any liberalization of present policies with reference to payments to persons claiming interests in blocked assets of the liberated area, and (2) the issuance of the proposed general license.

C. Period for Institution of Suit by Claimants Adverse to Government of Liberated Area

Before any privately-owned assets are authorized to be transferred to the government of the liberated area, the Treasury Department should accord a brief period of time in which adverse claimants could communicate with their debtors to arrange amicable settlements of claims or bring suit with reference thereto.

D. Rights of Such Claimants to Institute Such Suits

Subject to the outcome of discussions with the interested foreign governments, the Treasury Department will not seek to remove disabilities, existing under other rules of law, which hamper or preclude suits by claimants adverse to the foreign government. For example, if a person may not maintain an action because still technically an "enemy" or "ally of enemy", or because commercial communications with his place of residence have not been restored, the Treasury will not undertake to remove such disability.

E. Preferences in Such Suits

There should be no effort by Foreign Funds Control to alter the present United States domestic law with regard to preferences in such litigation.

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F. Payments to Persons Maintaining Such Suits

In the absence of most unusual circumstances, the Treasury should permit satisfaction of any final judgment against a resident of a liberated area, which is in effect after expiration of a reasonable time following resumption of commercial communication with the area. With respect to applications for licenses authorizing the payments of default judgments, the government of the area concerned might be advised that such application is pending and would be acted on 30 days after advice to the government concerned.

G. Reservation of Rights Regarding Enemy Property

Before any privately-owned assets are authorized to be transferred to the government of the liberated area, the United States should reserve its rights and position with respect to all assets within the United States which are enemy owned or controlled within the meaning of United States trading with the enemy law and with respect to all assets outside the United States which are nominally owned by United States nationals and in fact enemy owned or controlled within the meaning of United States trading with the enemy law.

H. Most Favored Nation Treatment of United States Creditors

Before any privately-owned assets are authorized to be transferred to the government of the liberated area, that government should give assurances that United States nationals will be treated on a most favored nation basis by that government.

I. Settlement of Conflicting Custodian Problem as Condition Precedent to Unblocking

Before any property of the liberated area, or of residents thereof, is authorized to be finally unblocked, a satisfactory settlement should be

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concluded between the two countries of all questions with regard to enemy property. (It would appear that the facts necessary to formulate the United States position with regard to such a settlement should be studied and conclusions reached at the earliest practicable date in order that a settlement may be reached prior to the time when there is strong pressure for a general unblocking.)

J. Consistent Treatment of Liberated Countries

The action taken with reference to one country should be of such a nature that basically, similar action may be taken with reference to other enemy-occupied countries. However, any action taken should not weaken the position of this government vis-a-vis the blocked European neutrals. No action should be finally agreed upon regarding any one liberated area prior to consultations and general acceptance on basic principles by the governments of all, or at least the major other areas which have been enemy occupied.

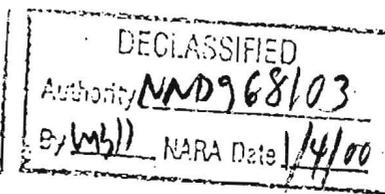
III. Proposed General License

A. Subject to the provisions of paragraph III B, the general license would authorize the transfer, by any banking institutions within the United States, to the account of the government of the area involved (or its designated instrumentality) of property held by such banking institutions in the name of:

1. Any individual within the area* (regardless of citizenship or length of residence in the area).
2. Any organization regardless of form (i.e., corporate, partnership, etc.) organized under the laws of the area or having its principal places of business within the area.

*The area would be defined by its boundaries as recognized by the United States.

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B. The general license specified in III A would not authorize any transfer of property:

1. In which there is any interest, direct or indirect, of:
 - (i) any individual in Germany, Italy, Japan, Bulgaria, Hungary, or Romania, or
 - (ii) any individual who is a citizen or subject of any of the foregoing wherever resident or doing business, or
 - (iii) any organization organized under the laws of, or having its principal place of business within, any of the foregoing, or
 - (iv) any organization which is a national of any of the foregoing countries by virtue of ownership or control, directly or indirectly, by one or more of such foreign countries and/or persons specified in (i), (ii), or (iii). ("National" and "foreign country" would have the meaning specified in the Order.)

2. Which is involved in judicial proceedings in the United States at the date of the proposed transfer under the proposed general license.

3. Which by specific action of the Treasury Department has been excluded from the terms of the general license.

C. The proposed general license would be issued immediately after the occurrence of all of the following events:

1. Resumption of civil administration in all or a substantial part of the area by a government recognized by the United States.

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2. The issuance by such government of a foreign exchange decree.

3. The resumption of commercial communications between the United States and the liberated area;

and would become operative 120 days after issuance or within any further extended period.

D. The proposed general license would require banking institutions effecting transactions to report monthly the total debits made to accounts under the authority of III A. In addition banking institutions would be required to maintain such records as would permit the furnishing, if requested, of such data as the name of the account debited, the amount and/or a description of the property transferred.

IV. Proposed Custodian's Agreement to be Reached with Any Government which Obtains a License of the Type Set Forth in III.

A. Conflicting Custodian Claims

1. Property vested by the United States Alien Property Custodian would not be considered in this agreement.

2. It would be explicitly noted that any conflicting custodian problem would not be finally disposed of in this agreement.

3. Property excluded from the provisions of the proposed general license because it was known or believed to be enemy owned or controlled would remain in status quo pending overall determination of the conflicting custodian problem. Licenses and authorizations to permit transactions required for the protection or management of the property would be issued subject to the approval, when necessary, of the government concerned but without, however, any recognition by this government of any asserted rights of such government.

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4. Going to lack of information, property may inadvertently be transferred under the general license which would have been excluded from the general license, under the provisions of III B 1, has all the facts been known prior to the date of the transfer. In order to protect the position of this government, the gentlemen's agreement should provide that promptly after determination of the existence of such facts the other government concerned would make available to this government a full report with respect thereto. The agreement should also provide that the government receiving the proposed general license will, upon request, surrender to the control of the Government of the United States any property (or its equivalent) that was transferred contrary to the conditions specified in III B 1.

B. Treatment of United States Claims

The government of the area concerned would agree to facilitate, to the greatest extent feasible, payments of debts owed to non file residents of the United States.

It would also agree that United States nationals would in all cases be treated on a most favored nation basis.

C. Licensing of Blocked Accounts Following Liberation of Area

Three classes of accounts may be envisaged:

1. Existing official accounts of liberated area governments;
2. Accounts opened by liberated area governments pursuant to the proposed general license discussed under III;
3. Accounts held in the name of residents of liberated areas which are left in status quo.

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While it is not proposed that the accounts of the government concerned and its nationals would be unblocked, it is believed that the accounts described above should be licensed in the broadest manner possible. A general license is proposed with respect to the accounts described above similar to the Swedish general license but expanding its scope to permit any dealings or transactions not then prohibited by General Ruling No. 11. Property of the type referred to in III B 1, 2, and 3 would be excluded from the scope of such a license.

If the government of the area concerned did not wish to certify on behalf of its nationals, ordinary licensing policy would apply.

The date of the issuance of a general license of this type would depend on a number of factors. Regardless as to circumstances, issuance would not appear desirable until at least the events described in III C 1, and 2 had occurred and possibly not then if at that date the United States retained trade controls.

V. General Comments on Miscellaneous Matters

A. Disclosure of TFR-300 and TFR-300 Data

It is not proposed that information of this type would be made available to any country on an overall basis. However, in order to clear up odds and ends toward the end it might be desirable to make TFR-300 data available, on an ad hoc basis.

B. Persons who have Died or Disappeared

It is proposed that accounts of such persons would be treated in the manner accorded such accounts under normal conditions. Consequently, no special provisions seem necessary.

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C. Advance Publicity

Consideration should be given to the desirability of discussing the proposed plan with various interested groups such as the Foreign Trade Council and the Labor Committee.

D. Location of Property and Debtors

Consideration should be given to including a provision in the proposed gentlemen's agreement requiring the government of the area concerned to agree to assist persons in the United States who own property in such area, or to whom debts are due from persons in such area to trace, identify and recover their property or to trace their debtors.

E. Exchange Guaranty Fund

Consideration should be given to the desirability of including, to prevent exchange difficulties, a provision in the proposed gentlemen's agreement requiring the government of the area concerned to agree to maintain in the United States, in United States Government securities or dollars, an amount equivalent to debts maturing within the following year owed United States creditors plus the dollar equivalent of the bank balances, in the currency of the area concerned, held by residents of the United States. The amount so maintained would constitute a guaranty of payment only to the extent that the foreign debtor was solvent.

D. H. Blake
 W. M. Roy
 E. Golding
 J. C. Jones
 J. Sachs

cc: Schmidt, Aik, Bennett, Blake, N. Davis, Day, Fisher, Golding,
 J.C. Jones, Moskowitz, O'Flaherty, Richards, Sachs, R. Schwartz

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Enclosure No. 3 to Despatch No. 166, Netherlands Series, August 18, 1944, from London

AMERICAN COMMENT

New York, August 6th

The New York Herald Tribune today says: --

"Current discussion among Bank and Treasury representatives envisage that the dollar assets of the Netherlands, now frozen under the dual control of Queen Wilhelmina's Government and Washington, will be the first ones to be released after the cessation of hostilities.

"This involves a substantial portion of the total of seven milliard dollars held by foreigners, which 'were put on ice' when the Nazis invaded western Europe.

"The reasoning behind this suggested release appears to be that the case of Holland will be simpler than other countries, and that conditions in the Low countries are expected to be well under control, because of the thorough, painstaking work done in the last few years.

"In the first place, the Dutch patriotic movement appears to be extremely well organized. It is not confined to the throwing of bombs and sabotage. Its leaders have drawn up elaborate laws and regulations, based on their knowledge of conditions on the spot, which they propose to enact when the enemy is gone.

"Similar work done by the Dutch authorities in exile here, as well as in London, where it had been recognized previously, proposed that the repudiation of property transfers which has taken place since May 1940, would not be an answer to the complexities created by over four years' occupation.

"While there have been many illicit changes of ownership and outright confiscation of property, it is felt that thousands of people who have died, or are still alive, sold their holdings to others legitimately. They would have done so under ordinary conditions, and cannot be penalized for actions taken in the ordinary course of human events.

A Survey to be Taken

"For this and other valid reasons, the Dutch authorities intend to go easy and make a thorough survey of the situation before taking decisive action. What can be said at this time is that a census of all property changes since May 10th, 1940, will be taken in the Netherlands, and that upon the basis of the findings other measures will be decided...."

—From the bulletin of the
 Netherlands Press Agency,
 dated London, August 8, 1944.

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FEDERAL RESERVE BANK
 OF NEW YORK

MEMORANDUM

August 31, 1944.

TO: Mr. Orvis A. Schmidt

FROM: Norman P. Davis

Sometime ago I suggested to Mr. R. P. Lores, Chairman of the Foreign Exchange Committee, that it might be helpful to us and the Treasury Department to have an expression of the views of the banks as to the practical problems to which they would be confronted upon the cessation of hostilities and after various countries have been liberated from the Nazis. I explained to Mr. Lores that what we had particularly in mind was to ascertain in what respects and to what extent a continuation of the applicability of the freezing control to accounts of liberated countries would be necessary for the protection of the banks.

On the basis of my suggestion, the Foreign Exchange Committee appointed a group of lawyers representing bank counsel to draw up a report in the above matter. Such report has now been submitted to us and enclosed herewith are a few copies thereof for your information. In addition, there are enclosed a few copies of a letter dated August 16, 1944, addressed to Mr. E. C. McVeagh, transmitting the comments of the Sub-Committee on Foreign Funds Control upon the above mentioned memorandum of counsel.

/s/ N. P. Davis

G.C. Bennett, Day, Smartz, Sachs, Richards, Alk, Moskowitz, Luxford,
 O'Flaherty, Golding, Blake, Jones, Fisher, Ball, Robinson

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"UNBLOCKING"

Memorandum for Mr. Lores, Chairman, Foreign Exchange Committee

The Foreign Exchange Committee has been requested to suggest to the Treasury Department methods of "unblocking" at the conclusion of the present war that would give the Banks the most protection and expose them to the least difficulties.

Messrs. Affleck, Lancaster and Mac Veagh at your request have considered the subject. While there is not complete agreement amongst them as to various details, and while some of them feel that it is difficult to advise satisfactorily until some opportunity is afforded to discover what objects and methods the Treasury may already have in mind, they have agreed upon the following tentative general conclusions, with the understanding that such conclusions do not necessarily represent in all respects the views of the respective banks for which they are counsel. It should also be pointed out that the comments made in this memorandum do not by any means deal completely with the problems involved and that all of these matters should be the subject of further consideration after any discussion with the Treasury Department.

Various kinds of situations are subject to "unblocking"; thus, there is the freezing of bank accounts of enemy nationals, of nationals of one or another of the United Nations who have been occupied, of "proclaimed nationals" living in the United States of America or in allied or neutral countries, and of nationals of neutral nations. Then there is the control of

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transfer of securities and the control under General Orderings Nos. 5, 5A, 6 and 6A of securities, currency, checks and drafts, as to importation thereof, which kinds of freezing fall into the same different kind of categories as bank accounts.

There are also the two other general categories into which dealings with blocked accounts fall generally: (1) dealing upon orders issued by the depositor prior to the end of the war, and (2) dealing upon orders issued by the depositor thereafter.

The following suggestions are, at your request, submitted solely from the standpoint of the bank operation, and apart from consideration of questions of national policy.

I.

Bank Accounts

A. Of Enemy Nationals

As to enemy countries it is not clear just when normal relations can be resumed, and presumably any determination on this point must await the terms and dispositions of the treaty of peace. It is therefore suggested that the freezing controls of enemy property be maintained for an

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appreciable period, and that any possible methods of unblocking thereof await discussion in the future. Continuation of the controls is not only necessary to protect the banks from various claimants in the enemy countries who have blocked property, but also as a protection against nationals of one or the other of United Nations who might seek redress for their losses by private litigation against enemy property in this country. This suggestion and these observations, of course, do not apply to former enemy property that has been vested by the AFG.

B. Of Neutral Nationals, and of Proclaimed (including "Ad Hoc" Nationals), Nationals Situated in the U.S.A. or in Allied or Neutral Countries

In general, from the standpoint of the banks, the sooner blocking is removed in these cases, the better. Even under present day conditions there should be no difficulty in establishing the authority of persons entitled to deal with these accounts, and any adverse claims arising with respect to them could, as soon as the war is over, be handled in a normal fashion. Thus normal relationships could be restored in all the categories whenever prompt communications by mail are reasonably available. This sug-

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gestion extends to countries such as Sweden, Portugal, Spain and Switzerland and to all proclaimed (including "ad hoc") nationals who are in the United States of America or in Allied or neutral territory.

C. Of Nationals of Enemy-Occupied Countries

When it comes to dealing with nationals of enemy-occupied countries, it is obvious that the banks will, initially at least, have considerable difficulty in establishing who are the proper officials and agents of their foreign corporate depositors. Thus there may be two or more sets of persons claiming to represent a foreign institution, or its shares and records may have been confiscated and sold. Ownership of property in these countries will often require a considerable period before they can be unravelled. Time also will be required for the establishment of a new government and the adoption of measures and methods of dealing with these problems. Meanwhile, it is to the interests of the banks in this country that they continue to have the protection of the freezing regulations until such time as the identity or authorities of their depositors can be determined by ordinary process and with due legality.

We therefore suggest that, in countries such as Holland, Norway, Belgium, France, Denmark, Czechoslovakia,

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Poland, Italy and the Philippines:

(a) There be no general unfreezing either as to any part of any such country or as to its former colonies or possessions until:

(i) That country, colony or possession has wholly ceased to be occupied by enemy forces;

(ii) A government recognized as such by the State Department is established and functioning in that country;

(iii) A sufficiently reasonable time thereafter has elapsed to have enabled the banks here to ascertain (x) the existence and location of their individual depositors, and (y) who are the owners and managers of their institutional depositors; and

(iv) In the case of colonies or possessions the mother country has already been unblocked;

(b) any general unfreezing apply only to orders issued after the date of such unfreezing and not to orders, instructions, powers of attorney, or other advices issued or executed at any time prior thereto; and

(c) any general unfreezing order specifically except from its terms any blocked accounts as to which conflicting claims have been notified and provide that the same shall remain blocked until freed by special license applied for by the bank concerned. With a view to avoiding such situations, it is also suggested that the Treasury make satisfactory arrangements for the central bank of each country to guarantee signatures of other banks, who in turn will guarantee signatures of other corporations and firms when requested.

However, there are various types of situations to which a normal functioning might safely be restored prior to the general unfreezing of a particular country. For this purpose we suggest, as exceptions to one above procedure

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with regard to nationals of enemy-occupied countries, that

(1) A general license be issued immediately at the end of the war permitting payment on orders or instruments issued or executed thereafter out of accounts in the U.S. of any individual occupied-country blocked national, if that individual is then present in person in the U.S.; and

(2) There be established a routine procedure of unblocking, as to post war orders and instruments, of accounts in the U.S. of nationals (both individual and institutional) of enemy-occupied countries in all cases where the bank holding the account advises the Treasury that the bank is satisfied as to the state of the account and with the authorizations in regard thereto.

In other words, the suggestion as to the nationals of an occupied country is that there be no general unblocking at all as to war-time orders and instruments or as to adversely claimed accounts, and that a general unblocking in other respects only after sufficient time has elapsed to permit a government to be established and to enable banks here to communicate and obtain satisfactory evidences and authorizations; but that where individual situations have been clarified to a bank's satisfaction so as to permit a normal relationship with a particular depositor, even though his country has not been generally unblocked, then unfreezing as to post-war orders and instruments should be applied by license to that depositor's account.

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**B. Orders Issued Prior to the Time of General
 Unfreezing as to Nationals of any Country**

The above procedure, after a general unfreezing of an occupied country with regard to post-war orders and instruments, will still leave freezing applicable with respect to orders issued or instruments executed prior to the general unfreezing. It is felt that such blocking should remain, with respect to such war-time orders and instruments, and that they be honored only upon special license, until, with respect to any particular country, there has been opportunity to examine the amount of such orders and instruments outstanding and to develop a policy in regard thereto. It is suggested also that a policy be adopted of not granting even any special license in these cases unless the bank holding the account advises that it is satisfied that the order or instrument is valid and effective and can safely be honored by it.

II.

TRANSFER OF SECURITIES

It is felt that unfreezing as to transfer and delivery in securities of blocked nationals should follow in general the same procedure as that in respect of bank accounts.

III.

IMPORT OF SECURITIES, CURRENCY, CHECKS, DRAFTS, ETC.

When it comes to import control of foreign currency,

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securities and other instruments, there are the different categories of countries to consider, and the different dates of issuance of the instruments will also call for different treatment. Thus there would seem no reason for maintaining restrictions on the importation of currency, securities, checks, or other instruments against any now unoccupied United Nation, or South America, or other neutrals, so far as the currency, securities, etc. of those countries or of the United States are concerned, whether issued during war-time or post-war.

However, when dealing with currency, securities, checks or other instruments issued, or claimed to be issued, by or in countries previously occupied by the enemy, it is suggested that rigid controls be continued against their importation whatever the immediate source of importation, except where the date of issuance or execution is subsequent to the end of the war. Such control is desirable to prevent the banks here being flooded by war-time money or other instruments or securities from the occupied countries before questions of genuineness and of ownership can be determined. Meanwhile any particular transaction should be permitted by special license when the bank concerned is satisfied on these matters.

A considerable time should elapse before the restrictions be generally removed as to any occupied country with

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regard to currency, securities or instruments that are not
post-war. Restrictions as to enemy countries will presumably
have to await the conclusion of peace.

August 10, 1944.

J. G. A. Jr.

W. W. L.

E. C. Mac V.

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August 18, 1944

Mr. E. H. MacVeagh
 Davis, Polk, Wardwell, Sunderland & Kiendl
 15 Broad Street
 New York, N.Y.

Dear Mr. Mac Veagh:

Reference is made to the memorandum on
 "Unblocking" which was the subject of your conference
 with Mr. R. F. Loree on August 14, 1944.

In accordance with Mr. Loree's instructions
 I delivered copies of the memorandum to the members of the Sub-Committee on Foreign
 Funds Control, and a meeting of the Sub-Committee was held on August 18, 1944.
 The following were present at the meetings:

Mr. Wilbert Ward, Vice President, National City Bank of New York
 Mr. W. H. Thompson, National City Bank (Substituting for
 Mr. E. C. Southwick)
 Mr. C. W. Weis, Second Vice President, Chase National Bank
 (Substituting for Mr. H. R. Robinson)
 Mr. F. W. Boehm, Assistant Treasurer, Bankers Trust Company,
 (Substituting for Mr. J. F. Rath)
 Mr. H. F. Berthoud, Manager, Foreign Dept., Deminick & Deminick
 Mr. A. C. Colquhoun, Manager, Brown Bros. Harriman & Co.
 Mr. G. C. Hanckel, Assistant Vice President, J. P. Morgan & Co. Inc.
 Mr. F. A. Buck, Assistant Vice President, Central Hanover Bank & Trust Co.
 Mr. J. L. Timoney, Assistant Treasurer, Guaranty Trust Co. of New York

Mr. W. M. Lewis, Assistant Secretary, Guaranty Trust Co. of New York
 Mr. J. S. Schaffer, Trust Department, Guaranty Trust Co. of New York

Last evening I telephoned Mr. Loree and advised
 him of the recommendations and suggestions advanced by the Sub-Committee, and he
 asked that I submit them to you for comment and telephone him this afternoon as to
 your observations in regard to the same. The undernoted are the recommendations
 and suggestions referred to:

1. Page 1 - That the wording of the third paragraph be amended to omit reference
 to "Proclaimed Nationals living in the United States of America",
 this due to the fact that the Proclaimed List does not contain the
 names of any persons living in the United States.

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Foreign Exchange Committee

Mr. E. C. Mac Veagh
 Davis, Folk, Wardwell, Sunderland & Kiendl

August 16, 1944

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2. Page 2, Bank Accounts, A. Of Enemy Nationals - That the names of the enemy countries, Germany, Italy, Japan, Bulgaria, Hungary and Roumania be specifically mentioned.
3. Page 3, That the recommendations in Paragraph B, with respect to "Neutral Nationals, etc." should not apply to Proclaimed List Nationals, but that Proclaimed List Nationals should be accorded the same treatment as enemy nationals.
4. Page 3, That a recommendation be made under the referred to Paragraph B. that when the Treasury Department anticipates unfreezing, it should at that time take special action in regard to their lists of Ad Hoc and Special Blocked Nationals.
5. Page 6, Paragraph (2) - The Sub-Committee commented on this recommendation by pointing out that if several banking institutions shared the account and but one applied for a license, confusion would result in that the account would be available in one institution and not in the others, and that some provision should be made for simultaneous action completely freeing the accounts in all institutions concerned.
6. Page 7, Transfer of Securities - The Committee agreed with the said recommendation but suggested that consideration be given to allowing a longer period of time before permitting the transfer of securities, and that this matter should be discussed by the Treasury Department with corporations who act as their own agents.
7. Page 7, Import of Securities, Currency, etc. - The Sub-Committee suggested that the following be substituted for the entire Section III:

"When dealing with the subject of the importation of currency, securities, checks or other instruments, it is suggested that rigid controls be continued against their importation, whatever the immediate source of importation, except where the date of issuance is subsequent to the end of the war. Such control is desirable to prevent the banks here being flooded by money or other instruments or securities before questions of genuineness and of ownership can be determined."
8. The Sub-Committee recommended that consideration should be given to the conditions under which funds and securities could be received and placed in free accounts, although a subject still had a blocked account with the domestic banking institution concerned.

Yours very truly,

John L. Timoney,
 Secretary, Sub-Committee

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MEMORANDUM FOR THE FILES;

September 29, 1944

Re: Unfreezing of Enemy-Occupied Areas

Reference is made to the memorandum of the Lorce Committee expressing the view that in any program with reference to the unfreezing of enemy-occupied areas, the matter should be handled on a specific license basis in many classes of cases in order to give the banks the protection which they deem desirable. Attached herewith is a copy of certain sections of the New York Banking Law which establish, I believe conclusively, that it would be unnecessary to accord such protection to New York banks and trust companies.

E. D. Golding

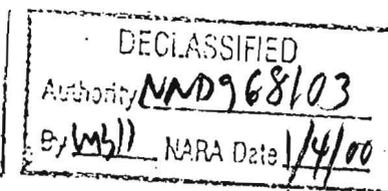
Attachment

Copies to: Messrs. Schmidt, Lurford, ~~Herman Davis~~, Bennett, Aik,
 O'Flaherty, Richards, Sachs, Ball, Day, Moskowitz, Robinson,
 Fisher, Blake, Jones and Mrs. Schwartz.

EDGolding:sk 9-29-44

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McKinney's Consolidated Laws of New York Annotated
§134 Banking Law

5. Notice to any bank or trust company of an adverse claim to a deposit of cash or securities standing on its books to the credit of, or held for the account of, any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank or trust company from a court of competent jurisdiction in the United States in a cause therein instituted by him wherein the person to whose credit the deposit stands, or for whose account it is held, or his executor or administrator is made a party and served with summons, or shall execute to said bank or trust company, in form and with sureties acceptable to it a bond, indemnifying said bank or trust company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of or delivery pursuant to such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company or for whose account it is held by said bank or trust company.

6. (a) In all actions against any bank or trust company to recover for moneys on deposit therewith, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such bank or trust company, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in section two hundred eight-seven of the civil practice act.

(b) The funds on deposit which are the subject of such an action may remain with such bank or trust company to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such bank or trust company in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such bank or trust company shall be struck out as a party to the action, and its liability for such deposit shall cease.

(c) The costs in all actions against a bank or trust company to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

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7. (a) A bank or trust company need not recognize or give any effect to (1) any claim to a deposit of cash or securities standing on its books to the credit of, or held by it for the account of, any corporation, firm or association in occupied territory or (2) any advice, statute, rule or regulation purporting to cancel or to give notice of the cancellation of the authority of any person at the time appearing on the books of such bank or trust company as authorized to withdraw or otherwise dispose of cash or securities of such corporation, firm or association, unless such bank or trust company is required so to do by appropriate process procured against it in a court of competent jurisdiction in the United States in a cause therein instituted by or in the name of such corporation, firm or association, or unless the person making such claim or giving such advice or invoking such statute, rule or regulation, as the case may be, shall execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying it from any and all liability, loss, damage, costs and expenses for and on account of recognizing or giving any effect to such claim, advice, statute, rule or regulation.

(b) For the purposes of this subdivision (1) the term "occupied territory" shall mean territory occupied by a dominant authority asserting governmental, military or police powers of any kind in such territory, but not recognized by the United States as the de jure government of such territory, and (2) the term "corporation, firm or association in occupied territory" shall mean a corporation, firm or association which has, or at any time has had, a place of business in territory which has at any time been occupied territory.

(c) The foregoing provisions of this subdivision shall be effective only in cases where (1) such claim or advice purports or appears to have been sent from or is reasonably believed to have been sent pursuant to orders originating in, such occupied territory during the period of occupation, or (2) such statute, rule or regulation appears to have emanated from such dominant authority and purports to be or to have been in force in such occupied territory during the period of occupation.

(d) The foregoing provisions of this subdivision shall apply to claims, advices, statutes, rules or regulations made, given or invoked either prior to, or on or subsequent to the effective date of this act.

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(2) *[unclear]* (Room) (Bldg.)
(3) (Room) (Bldg.)

Wayne: Under the present turn of events, we have no immediate need for this. I suggest you send the original to the official files and keep the copies. If we ever have to use the memo we should review it carefully to see complete
From: *[unclear]* (Date)
[unclear] (Room) (Bldg.)

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OCT 23 1944

Enforcement and Priorities of Claims
 Against Owners of Blocked Assets

When a program for the "unfreezing" of blocked assets within the United States is initiated there will be two general classes of contractual claims against the owners of such assets. The first class will consist of claims which are wholly domestic except for the fact that the obligors are nationals of foreign countries, i.e. claims which accrued in the United States to persons who were both citizens and residents of the United States and which are held by persons who are both citizens and residents of the United States. For convenience, claims in this class will hereinafter be referred to as "domestic claims". The second class will consist of claims which either accrued in foreign countries, accrued to citizens or residents of foreign countries, or are held by citizens or residents of foreign countries. Claims in this class will hereinafter be referred to as "foreign claims". It is proposed to set forth in Part I of this memorandum some of the considerations which relate to the enforcement of claims against owners of blocked assets in the jurisdictions where the assets are held. Particular emphasis will be given to the problems of enforcement of foreign claims. Since New York is the jurisdiction where the bulk of blocked assets is situated, particular attention will be given to the laws of New York. It is proposed in Part II to consider the relative rights of holders of domestic claims and holders of enforceable foreign claims to participate in the distribution of blocked assets upon the insolvency of the owner who is their common obligor. Particular attention will be given to the relative rights of persons holding domestic claims and persons holding foreign claims to participate in the distribution of the assets of a foreign corporation under the laws of New York and under the Federal Bankruptcy Act.

PART I

Enforcement of Claims

A. Right of Access to the Courts

It is clear that foreign claims may be enforced by bringing actions on them in the courts of New York. It is the rule in that state that actions may be brought in the courts of New York on contracts even though such contracts are made abroad between citizens of foreign countries

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 and are to be performed in foreign countries. Holzer v. Deutsche Reichsbahn-Gesellschaft, (N.Y. 1938) 14 N.E. (2d) 798; Wederman v. United States Trust Co. of New York, (N.Y. 1932) 179 N.E. 712; cf. Russian Reinsurance Co. v. Stoddard, (N.Y. 1925) 147 N.E. 703, 704. It has also been held that contracts made abroad between subjects or citizens of foreign countries may be sued upon in New York, even though the agreement of the parties expressly provided that no action should be brought except in a specified foreign jurisdiction. De Gorter v. Banque de France, (1941) 29 N.Y.S. (2d) 842, aff'd (1941) 30 N.Y.S. (2d) 815; Sudbury v. Ambi Verwaltung, Etc., (1925) 210 N.Y.S. 164; Sliosberg v. New York Life

1/ An important exception to this general rule is found in the New York General Corporation Law, § 225, which reads as follows:

"An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

"1. Where the action is brought to recover damages for the breach of a contract made within the state, or relating to property situated within the state, at the time of the making thereof.

"2. Where it is brought to recover real property situated within the state, or a chattel, which is replevied within the state.

"3. Where the cause of action arose within the state, except where the object of the action is to affect the title to real property situated without the state.

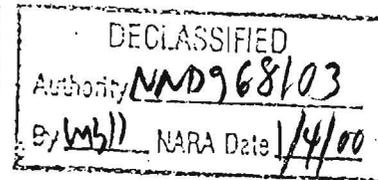
"4. Where a foreign corporation is doing business within this state.

"Within the meaning of this section, a foreign corporation shall not include a corporation located in this state and created by or under the laws of the United States."

It has been held that where a foreign corporation could not sue in the courts of New York upon a cause of action because of this section, the cause of action might still be enforced in New York after an assignment thereof to a resident of New York for the purpose of suit. McCauley v. Georgia Railroad Bank, (N.Y. 1924) 147 N.E. 175. At the time that case was decided there was no applicable statute prohibiting the assignment of claims for the purpose of suit which provided a defense to an obligor to a claim assigned for such purpose. See Pan-American Securities Corp. v. Fried. Krupp A. (1938) 6 N.Y.S. (2d) 993, 998, aff'd, (1939) 10 N.Y.S. (2d) 205. That there is authority that Sections 274 and 275 of the Penal Law now provide such a defense, see Subdivision B, infra.

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Ins. Co., (1926) 217 N.Y.S. 226. A provision of a contract which purports to oust the New York courts from jurisdiction over controversies arising out of the contract is against the public policy of New York and is therefore treated as null and void by the courts of that state. De Gorter v. Banque de France, supra.

B. Assignment of Claims for Purpose of Suit.

It appears that neither foreign claims nor domestic claims, which are held by persons who acquired them by assignments or purchases for the purpose of bringing suit thereon in violation of the penal laws of New York, could be enforced in the courts of New York, although there may be a conflict of authority on this point. Section 274 of the New York Penal Law prohibits attorneys from taking assignments of, or purchasing, certain types of claims for the purpose of bringing actions thereon. Section 275 extends the prohibition to persons and partnerships engaged in the business of collection and adjustment of claims, and to corporations and associations, other than corporations organized for religious, benevolent or charitable purposes. Section 275 (formerly part of Section 280 of the Penal Law)

2/ Sections 274 and 275 read as follows:

"§ 274. Buying demands on which to bring an action

"An attorney or counselor shall not: 1. Directly or indirectly, buy, take an assignment of or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, with the intent and for the purpose of bringing an action thereon.

"2. By himself, or by or in the name of another person, either before or after action brought, promise or give, or procure to be promised or given, a valuable consideration to any person, as an inducement to placing, or in consideration of having placed, in his hands, or in the hands of another person, a demand of any kind, for the purpose of bringing an action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof. But this subdivision does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

"3. An attorney or counselor who violates the provisions of this section is guilty of a misdemeanor."

"§ 275. Purchase of claims by corporations or collection agencies

"No person or co-partnership, engaged directly or indirectly in the business of collection and adjustment of claims, and no corporation or association, directly or indirectly, itself or by or through its officers, agents or employees, shall solicit, buy or take an assignment of, or be in any manner interested in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon; provided however, that bills receivable, notes receivable, bills of exchange, judgments or other things in action may be solicited, bought, or assignment thereof taken, from any executor, administrator, assignee for the benefit of creditors, trustee or receiver in bankruptcy, or any other person or persons in charge of the administration, settlement or compromise of any estate, through court actions, proceedings or otherwise. Nothing herein contained shall affect any assignment heretofore or hereafter taken by any moneyed corporation

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has been construed to furnish a defense to an obligor in a suit based on a claim assigned in violation thereof. Transbel Inv. Co. v. Roth, (S.D.N.Y. 1940) 36 F. Supp. 396; see Browning v. Mavin, (N.Y. 1885) 2 N.E. 635; Pan-American Securities Corp. v. Fried Krupp A. (1938) 6 N.Y.S. (2d) 993, 998, aff'd. (1939) 10 N.Y.S. (2d) 205; 3/ cf. Mayon v. Cain, (1897) 47 N.Y.S. 855. A dictum to the contrary is found in Commission For P. Relief v. Banca Nationala A. Romaniei, (1941) 27 N.Y.S. (2d) 377. There it was contended that an assignment of rights to gold in a Roumanian bank by a Delaware corporation to a New York corporation was taken for the purpose of bringing suit against the depository for the value of the gold in violation of Section 275. The court said in dictum that a finding that the statute had been violated would not vest the court with power to decline jurisdiction. This dictum was unnecessary to the decision of the motion before the court, because the New York corporation was rather clearly organized for benevolent and charitable purposes and therefore not subject to the interdict of the statute. Moreover, the court did not say that an assignment in violation of the statute would not furnish a defense on the merits to an action brought for the value of the gold, but merely that the fact of such an assignment was not grounds for refusing to entertain jurisdiction.

2/ Cont'd.

authorized to do business in the state of New York or its nominee pursuant to a subrogation agreement or a salvage operation, or by any corporation organized for religious, benevolent or charitable purposes.

"Any corporation or association violating the provisions of this section shall be liable to a fine of not more than five thousand dollars; any person or co-partnership, violating the provisions of this section, and any officer, trustee, director, agent or employee of any person, co-partnership, corporation or association violating this section who, directly or indirectly, engages or assists in such violation, is guilty of a misdemeanor."

Both sections are modified by Section 275a which reads as follows:

"§ 275-a. Limitation of preceding sections

"Sections two hundred seventy-four and two hundred seventy-five of this chapter do not prohibit the receipt of a bond, promissory note, bill of exchange, book debt, or other thing in action, in payment for property sold, or for services actually rendered, or for a debt antecedently contracted; or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance."

3/ At the time the Krupp case was decided the section did not prohibit purchases for the purposes of suit as distinguished from bare assignments. The statute was amended in 1939, however, to prohibit both types of transfers. Note of Commission, 1939 Leg. Doc. No. 65(0).

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C. Statute of Limitations

Some foreign and some domestic claims may be unenforceable in the courts of New York because they are barred by the statute of limitations of that state. The general statutes of limitations are found in the New York Civil Practice Act, although special statutes are scattered throughout the statutory substantive law. The time allowed in New York for bringing actions upon contracts generally is six years. A provision to this effect is found in Section 48 of the Civil Practice Act, which reads in part as follows:

"The following actions must be commenced within six years after the cause of action has accrued:

"1. An action upon a contract obligation or liability express or implied, except a judgment and except as provided by section forty-seven and forty-seven-a. ^{4/}

The effect of the six-year statute of limitations prevailing in New York upon many contractual claims is modified by the conflict of laws principles expressed in Section 13 of the Civil Practice Act. These principles will affect the enforcement of foreign claims arising outside of New York and they require particular attention because they differ from conflict of laws principles prevailing in a majority of the states.

The general conflict of laws rule with respect to causes of action which are barred either by the law of the forum or the law of the place where the cause of action arose is succinctly stated in Restatement, Conflict of Laws (1934) Sec. 603, 604 which read as follows:

"§ 603. Statute of Limitations of Forum.
 If action is barred by the statute of limitations of the forum, no action can be maintained though action is not barred in the state where the cause of action arose."

"§ 604. Foreign Statute of Limitations
 If action is not barred by the statute of limitations of the forum, an action can be maintained, though action is barred in the state where the cause of action arose."

Section 13 of the New York Civil Practice Act, on the other hand, provides that a foreign cause of action may not be prosecuted if such cause of action is barred either by the laws of New York or by the laws of the

4/ Under sections 47 and 47a it is provided that actions on sealed instruments, on mortgages of real property and on instruments secured by such mortgages must be brought within six years after the accrual of the cause of action.

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state or country where the cause of action arose, except that where the cause of action originally accrued in favor of a resident of New York, the laws of New York shall apply. That section (as amended by the laws of 1943) provides as follows:

"§ 13. Limitation where cause of action arises outside of the state. Where a cause of action arises outside of this state, an action cannot be brought in a court of this state to enforce such cause of action after the expiration of the time limited by the laws either of this state or of the state or country where the cause of action arose, for bringing an action upon such cause of action, except that where the cause of action originally accrued in favor of a resident of this state, the time limited by the laws of this state shall apply."

what was the law before Apr. 15, 1943 unless this was amended; if diff. law does § 13 apply etc. etc. ya.

It appears from this language that if a cause of action on a foreign claim arises in France in favor of a resident of France, and the French statute of limitations upon that type of cause of action is three years, the claim could not be enforced in New York after the expiration of three years from the date of accrual of the cause of action. The six-year period of limitations provided for in Section 48 of the Civil Practice Act would be of no avail to the claimant. If, however, the cause of action arose in France in favor of a resident of New York, the claimant would have the full six years to enforce his cause of action in New York.

What is stat. of France, Belg., Holland, Norway, Luxembourg

The effect of Section 13 as a bar to causes of action arising outside of New York is modified by two other sections of the Civil Practice Act which will have an important effect upon the enforcement of foreign claims. The first of these is Section 19 which in certain cases suspends the running of the New York statute of limitations on causes of action while the obligor is outside of New York. That section provides as follows:

"§ 19. Effect of defendant's absence from state or residence under false name. If, when the cause of action accrues against a person, he is without the state, the action may be commenced, within the time limited therefor, after his coming into or return to the state. If, after a cause of action has accrued against a person, he departs from the state and remains continuously absent therefrom for the space of four months or more, or if, without the knowledge of the person entitled to maintain the action, he resides within the state under a false name, the time of his absence or of such residence within the state under such false name is not a part of the time limited for the commencement of the action. But this section does not apply in either of the following cases:

"1. While a designation or appointment, voluntary or involuntary, made in pursuance of law, of a resident or nonresident person, corporation, or private or public officer on whom a summons may be served within the state for another resident or nonresident person

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or corporation with the same legal force and validity as if served personally on such person or corporation within the state, remains in force.

"2. While a foreign corporation has had or shall have one or more officers or other persons in the state on whom a summons for such corporation may be served."

The importance of this section lies in the fact that it has been construed to apply to actions based on causes of action arising outside of New York. Plummer v. Lowenthal, (1917) 165 N.Y.S. 220. In that case plaintiff sued on promissory notes issued by defendant in Illinois. Both plaintiff and defendant were residents of Illinois. Plaintiff had brought his action after the expiration of the period allowed for bringing actions on promissory notes under the New York statute of limitations. The court stated (at page 221):

"By section 401 of the Code [now section 19 of the Civil Practice Act] it is expressly provided as follows:

"If, when the cause of action accrues against a person, he is without the state, the action may be commenced within the time limited therefor, after his return into the state."

"For this reason, since the plaintiff and defendant are both residents of Illinois, and the cause of action accrued there, our own statute has not run, and will not start to run, until the coming into the state of the nonresident, and hence the limitation imposed by our statute is not applicable."

It would appear from this language that the applicable New York statute of limitations on a claim arising in a foreign country against a person outside the state of New York to whom Section 19 of the Civil Practice Act applies would not begin to run until the obligor comes to New York. See Myers v. Credit Lyonnaise, (N.Y. 1932) 182 N.E. 61. Whether Section 19 also suspends the running of the statute of limitations of the state or country where the cause of action arose apparently has not been decided.

Another section of the Civil Practice Act which limits the effect of Section 13 and which may be available to certain classes of holders of foreign claims as a suspension of the running of the applicable New York statute of limitations is Section 27, which provides:

"§ 27. Effect of war on right of alien. Where a person is disabled to sue in the courts of the state by reason of either party being an alien subject or citizen of a country at war with the United States, the time of the continuance of the disability is not a part of the time limited for the commencement of the action."

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 can always be
 sued.*

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The rule in New York has long been that an alien enemy residing in the enemy's country cannot during the war prosecute an action in the New York courts. Rothbarth v. Herzfeld, (1917) 167 N.Y.S. 199, aff'd (1918) 119 N.E. 1075; Sanderson v. Morgan, (1868) 39 N.Y. 231; Jackson v. Decker, (N.Y. 1814) 11 Johns. 417; Bell v. Chapman, (N.Y. 1813) 10 Johns. 182; cf. Carpenter v. Bawyer, (U.S. 1871) 14 Wall. 216. There is a qualification of this rule to the effect that the incapacity to sue applies only to alien enemies who are within their own territory. Sanderson v. Morgan, supra. Section 27 of the Civil Practice Act appears to be designed to mitigate the hardship imposed upon enemy aliens by the rule that they cannot sue during hostilities so long as they remain in enemy territory. It will be noted that the terms of the section are so phrased as to extend the period of limitation only on claims by or against "a subject or citizen of a country at war with the United States." Thus it would seem from a literal reading of Section 27 that that section would not suspend the running of the statute of limitations on a claim held by a person who is not a subject or citizen of a country at war with the United States, but who, because he resides in enemy-occupied territory, is both an "enemy" under Section 2 of the Trading with the enemy Act and an "enemy national" under General Ruling No. 11. If the reason for the statute is taken into consideration, however, it would seem that the running of the period of limitation on claims of persons in occupied territory should be suspended. The rule that an enemy in the enemy's country cannot sue in the courts of New York during hostilities has been held to mean that a person in territory occupied by the enemy cannot sue during hostilities even though he is neither a citizen or subject of a country with which the United States is at war. H. P. Drewry, S.A.R.L. v. Onassis, (1943) 42 N.Y.S. (2d) 74, aff'd, (1944) 53 N.E. (2d) 243.^{5/} It would seem to be a most unjust construction of the statute to

5/ If a literal construction of Section 27 is proper, subjects and citizens of "real" enemy countries may be in a more favorable position with respect to enforcing their claims than subjects and citizens of occupied territories, since the running of the statute of limitations would be suspended as to claims of the former under that section, but not as to claims of the latter. As pointed out in the text, there are reasons why a literal construction would appear to be undesirable. Such a construction would not, however, appear to violate the provisions of treaties to which the United States is a party. In treaties with Poland, (1931) 48 Stat. 1507, 1508; Austria, (1928) 47 Stat. 1876, 1878; Estonia, (1925) 44 Stat. 2379, 2380; Latvia, (1928) 45 Stat. 2641, 2642 and Norway, (1928) 47 Stat. 2135, 2136, the following provision appears:

"The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law".

It will be noted that the terms of this provision do not require that the nationals of the High Contracting Party dealing with the United States shall have access to the courts in the United States on exactly the same terms as nationals of all other foreign countries. The "most favored nation" clauses of the above treaties do not inject such a requirement into the provision, because in none of such treaties do such clauses relate to the right of access to the courts.

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hold that it suspends the operation of the statute of limitations on claims in favor of "real" enemies because they cannot sue during the war, but does not suspend it on claims of residents of occupied countries who likewise cannot sue during the war. A construction that the operation of the statute of limitations is suspended by Section 27 with respect to claims of persons who are enemies merely because their countries were invaded by the enemy, would seem to be justified both because such persons are affected by the hardship which the statute was intended to alleviate and because the Civil Practice Act is to be "liberally construed". New York Civil Practice Act, § 2.

The effect of Section 27 of the Civil Practice Act is qualified by Section 28, which provides:

"A person cannot avail himself of a disability unless it existed when his right of action or of entry accrued."

The Court of Appeals has held that Section 28 applies to the disability to sue referred to in Section 27, and that consequently where a claim accrues prior to the outbreak of hostilities, the claimant cannot rely upon Section 27 to suspend the running of the period of limitations during the course of hostilities. Nathan v. Equitable Trust Co., (N.Y. 1929) 165 N.E. 282. It is therefore clear that no claim which accrued before December 11, 1941 (or December 8, 1941 in cases where Japan is the enemy country involved) is protected from the running of the statute of limitations by Section 27.

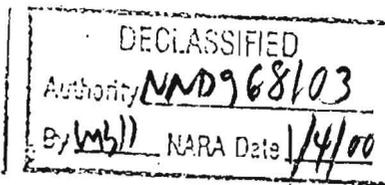
D. Necessity of Demand

Certain types of foreign and domestic claims will be unenforceable unless there has been a demand for performance made upon the obligor by the obligee. A demand for performance is not a necessary condition precedent to the accrual of a cause of action on every contract. Where an agreement is absolute and unconditional the general rule is that no demand for performance is necessary. 17 C.J.S. Contracts, sec. 478; Cf. Bintz v. Mid-City Bank Corporation, (1928) 229 N.Y.S. 390. Where, however there is no fixed time for performance, a demand is ordinarily necessary to put the obligor in default. Lawson v. Hogan, (1883) 93 N.Y. 39; Beechwood Gun Club v. City of Beacon, (1933) 275 N.Y.S. 249, aff'd. (1934) 275 N.Y.S. 219. One of the most common types of actions where a demand is usually required is an action by a depositor to recover his deposit from a bank. B'k of Brit. No. Am. v. Mer. Nat'l Bank of N.Y., (1882) 91 N.Y. 106; Stevens v. First Nat. Bank of Painted Post, (1940) 18 N.Y.S. (2d) 451, aff'd. (1940) 19 N.Y.S. (2d) 316; Delehunty v. Central Nat. Bank, (1899) 56 N.Y.S. 39, aff'd. (1901) 71 N.Y.S. 416.

Authority is lacking as to what law governs the necessity for a demand on contracts which are made and performable outside the forum. It would seem that the necessity for demand in such cases should be governed

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either by the law of the place where the contract was made or by the law of the place where it was to be performed, under the doctrine prevailing in New York that where a contract is made and is to be performed in a foreign country the laws of that country govern the performance of the contract. Holzer v. Deutsche Reichsbahn-Gesellschaft, supra; Cf. Re-statement, Conflict of Laws (1934) Sec. 369. The Courts of New York do not appear to have considered the conflict of laws question, however, and, in cases where actions have been brought on foreign claims, they have applied their own internal laws in determining whether a demand was necessary. Sokoloff v. National City Bank, (N.Y. 1928) 164 N.E. 745; Van Der Veen v. Amsterdamsche Bank, (1942) 35 N.Y.S. (2d) 945; Silverman v. National City Bank of New York, (1928) 232 N.Y.S. 339. ^{6/}

The problem of whether a demand is necessary as a condition precedent to the enforcement of a claim against the owner of blocked assets will probably occur most frequently in cases involving bank deposits, and for this reason the internal laws of New York with respect to the necessity of a demand will be considered in some detail insofar as they apply to bank deposits.

The typical bank deposit claim will be a foreign claim, based on a deposit in a bank in a foreign country by a resident of that country. The bank may have a head office in one country and branches in various other countries. It may be conceded that the depositor could not ordinarily enforce his claim to the deposit in the New York courts without having first made a demand for payment. B'k of Brit. No. Am. v. Mer. Nat'l Bank of New York, supra; Stevens v. First Nat. Bank of Painted Post, supra; Delahunty v. Central Nat. Bank, supra. A more difficult question is where the demand must be made if the bank has more than one branch or office.

The New York courts have held that a bank deposit is payable only at the branch or office where the deposit is held. Bluebird Undergarment Corporation v. Gomez, (1931) 249 N.Y.S. 319; Cf. Chrzanowska v. Corn Exch. Bank, (1916) 159 N.Y.S. 385, aff'd. (1919) 122 N.E. 877. From this it has been reasoned that the demand must be made at the branch or office where the deposit is payable. Murtaugh v. Yokohama Specie Bank, (1933) 269 N.Y.S. 65; see Bluebird Undergarment Corporation v. Gomez, supra; Silverman v. National City Bank of New York, supra; Cf. L. C. Smith & Bros. Typewriter Co. v. Credit Lyonnais, (N.Y. 1934) 194 N.E. 57. In the Murtaugh case, a Japanese citizen in the United States had a deposit of yen in the home office in Japan of a Japanese bank. An action was brought on behalf of the depositor to recover the deposit. No demand had been made on the home office in Japan, but a demand had been made upon the New York branch of the bank. The court dismissed the complaint on the ground that a demand should have been made on the home office since the deposit was maintained there. In other cases, the courts have assumed, without directly deciding, that where a demand is necessary it should be made at the branch or office

^{6/} See Mr. Hartwig's memorandum of July 6, 1944.

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where the deposit is payable. Sokoloff v. National City Bank, supra;
Silverman v. National City Bank of New York, supra.

Although it is the general rule in New York that a demand must be made as a condition precedent to the recovery of a deposit from a bank, and that such demand must be made upon the branch or office where the deposit is maintained and payable, there are some conditions which operate to excuse the necessity of a demand. One of these, which is especially applicable to many deposits with banks having blocked assets in the United States, is discussed below.

It is the rule in New York that where a demand would be useless and futile, if made, demand is excused. Sokoloff v. National City Bank, supra; see Van Der Veen v. Amsterdamsche Bank, supra; Silverman v. National City Bank, supra. This is especially true where the conduct of an unlawful or unrecognized government renders the demand useless. Thus, in the Sokoloff case it was held that where a Russian branch of a New York bank had been seized by the unrecognized Soviet government subsequent to the Soviet revolution, and the depositor "would have been shot", had he demanded payment at the branch, a demand against the branch was useless and excused. In the Van Der Veen case, it was said that a demand in person by the depositor against a Dutch bank was excused in view of the fact that the Netherlands had been invaded by the Nazis and the depositor, who had fled from the Netherlands, would have "been shot or placed in a concentration camp" had he returned to the Netherlands to make his demand.

In cases where a depositor maintains a deposit with a bank in one of its branches or offices in enemy-occupied territory, it would seem that under the rule of the Sokoloff case, he could enforce his claim without first making a demand on the branch or office where the deposit is maintained, if it is established that a demand would have been futile if made. Whether, in view of the futility of making a demand on the branch or office where the deposit is maintained, he must make a demand upon the home office (provided it is not in enemy-occupied territory) is a more difficult question. In the Sokoloff case, it does not appear in the court's statement of the case whether the plaintiff depositor had made a demand upon the home office of the bank in the United States prior to the bringing of suit. The court held the plaintiff could recover because demand on the Russian branch was useless, but it did not discuss the question of whether a demand should have been made on the home office. In Silverman v. National City Bank of New York, supra, the court assumed that a demand by the depositor against the Russian branch of an American bank was excused when the branch was "nationalized" by the Soviets, but gave judgment for the defendant bank, partly on the ground that no demand had been made of the home office in the United States.

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PART II

Priorities Between Domestic and Foreign Claims

As stated on page one, claims against owners of blocked assets which are held by persons who are both citizens and residents of the United States, and which accrued in the United States to persons who were both citizens and residents of the United States are, for convenience, referred to herein as "domestic" claims. Claims which either accrued in foreign countries, accrued to citizens or residents of foreign countries, or are held by citizens or residents of foreign countries, are referred to as "foreign" claims. A claim is "foreign" if: (1) it accrued in a foreign country (2) it accrued to a citizen of a foreign country (3) it accrued to a resident of a foreign country (4) it is held by a citizen of a foreign country, or (5) it is held by a resident of a foreign country. It is proposed to consider below whether holders of domestic claims are entitled to priority over holders of any of the above five types of foreign claims in the distribution of the assets in New York of their common obligor upon the latter's insolvency or bankruptcy. For the sake of simplicity it will be assumed that the obligor is a corporation which was organized under the laws of a foreign country and which has assets in New York. Consideration will be given both to the laws of New York and to the Federal Bankruptcy Act.

A. The Constitutional Question

In general, there would appear to be no constitutional barrier to the State of New York's according priority to domestic claims over any of the five types of foreign claims in the distribution of the assets of an insolvent debtor. A state may not grant priority to the claims of its own citizens in the distribution of the assets within its borders of an insolvent foreign corporation if to do so would deny equality to claims of the same class belonging to citizens of other states of the United States. Blake v. McClung, (1898) 172 U.S. 239. The doctrine of that case is based on the "privileges and immunities" clause of U. S. Const. Art IV, sec. 2, which is construed to prohibit a state from discriminating against creditors who are citizens of other states in the distribution of the assets in the state of an insolvent foreign corporation. But the "privileges and immunities" clause protects only "citizens of each state". ^{7/} Since a corporation is not a citizen it affords no protection to corporations even if they are domiciled in the United States. Blake v. McClung, supra. Clearly it does not protect citizens of foreign countries from discrimination, since they do not come within the meaning of the term "citizens of each state". It is held also that the Fourteenth Amendment of the Constitution does not preclude a state from according priority to local creditors as against

^{7/} The clause reads as follows: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

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creditors who are nationals of foreign countries and whose claims arose abroad. United States v. Pink, (1942) 315 U.S. 203, 228; Disconto Gesellschaft v. Umbreit, (1908) 208 U.S. 570. It appears, therefore, that New York could within the limits of the Federal Constitution, accord priority in the distribution of the assets in New York of an insolvent foreign corporation to creditors who are residents or citizens of the United States as against creditors who are citizens or residents of foreign countries. There is apparently no reason why it could not accord priority to domestic claims over each of the five types of foreign claims, above enumerated. Some exceptions might be found to this power, such as if New York attempted to prefer claims arising in New York to citizens of New York over claims of the same class arising in New York to aliens residing in New York. A discrimination against foreign claims of this type might violate the "equal protection" clause of the Fourteenth Amendment of the Constitution. Cf. United States v. Pink, *supra*; Blake v. McClung, *supra*. In general, however, there appears to be constitutional power for a state to accord priority to domestic claims over foreign claims. The important question is whether the State of New York has in fact done so. It is believed that whether or not domestic claims are entitled to priority over foreign claims in the distribution of the assets in New York of an insolvent foreign corporation depends upon whether there is an applicable New York statute according such priority. Statutes which accord priority to domestic claims and to some foreign claims over some, but not all, types of foreign claims, are set forth in the following subdivision of this memorandum.

B. Statutes Providing for Priority

(1) Statutes Providing for Special Deposit

It is settled that where a statute requires a foreign corporation as a condition precedent to doing business in the state to deposit assets in the state for the protection of a certain class of domestic creditors, such class will have priority in the payment of claims from the assets deposited upon the corporation's insolvency. In re Stoddard, (N.Y. 1926) 151 N.E. 159. In that case a Norwegian insurance company had deposited securities with the state superintendent of insurance under a statute which required the company, as a condition precedent to its doing business in New York, to deposit the securities "for the benefit of the policy holders in any of such states or the United States" or "for the general benefit and security of all its policy holders in the United States". Later the company became insolvent. A domiciliary receiver was appointed in Norway and the state superintendent of insurance took possession of the securities deposited with him and of other assets of the company in the United States. The court held that claims based upon policies issued to residents or citizens of the United States by agencies of the company doing business in the United States were entitled to priority in payment from the assets deposited. The court also held that the statute was not designed for the protection of citizens and residents of

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the United States to whom policies were issued outside of the United States, and that such persons were therefore not entitled to priority.

A derivative of the statute considered in the Stoddard case is now in force in New York and is found in Section 104 of the (New York) Insurance Law which reads as follows:

"1. No alien insurer now or hereafter authorized to do an insurance business in this state, shall do such business herein unless it shall have securities deposited (for the benefit of all of its policyholders, or of all of its policy holders and creditors, in the United States) with the superintendent or with the proper state officers of other states or held as trustee assets in an amount at least equal to one hundred fifty per centum of the minimum capital required of like domestic stock insurers to transact the same kind or kinds of business which such alien insurer is licensed to do in this state. . . ."

(2) Banking Law

Section 606, Subdivision 4(a) of the Banking Law provides that the Superintendent of Banking may under certain conditions, take possession of the business and property in New York of a foreign banking corporation, and liquidate them, giving priority to the creditors of the corporation whose claims arose from transactions with the New York agency of the corporation, or whose names appear as creditors upon such agency's books. Subdivision 4 reads as follows:

"4. (a) The superintendent may also forthwith take possession of the business and property in this state of any foreign banking corporation, which has been licensed by him under the provisions of this chapter, upon his finding that any of the reasons 8/ enumerated in subdivision one of this section exist with respect to such foreign banking corporation or that it is in liquidation at its domicile or elsewhere.

8/ Among the reasons enumerated in subdivision one are the following:

"(c) 1 The banking corporation appears to the Superintendent to be 2 in an unsafe or unsound condition to transact its business;

* * *

"(e) 1 The banking corporation appears to the Superintendent to have 2 an impairment of its capital; or, in the case of a savings and loan or credit union, . . . assets insufficient to pay its debts and the amount due members upon their shares;"

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After taking possession thereof the superintendent shall liquidate the business and property of any such foreign banking corporation in accordance with the provisions of this chapter applicable to the liquidation of banking organizations; provided, however, that the claims of creditors of such corporation arising out of transactions had by them with its New York agency or agencies or whose names appear as creditors on the books of such agency or agencies shall be preferred against the assets of such corporation in this state without prejudice to their right to share in the other assets of such corporation.

"(b) Whenever the claims of such creditors, together with interest thereon, and the expenses of the liquidation have been paid in full, the superintendent upon the order of the supreme court shall turn over the remaining assets to the principal office of such foreign banking corporation, or to the duly appointed domiciliary liquidator or receiver of said foreign banking corporation."

It will be noted that the test of priority under this section is not the residence or citizenship of the creditor, nor the place where the claim arose, but whether or not his claim arose with reference to the business of the New York agency of the foreign bank.

(3) Statute Providing for Receivership of Assets of Foreign Corporations

Section 977-b of the New York Civil Practice Act provides for the appointment of a receiver in certain enumerated cases of the assets in the state of New York which belong to a foreign corporation. It provides for the payment of creditors' claims out of such assets and sets up a system of priorities which in some cases favors the claims accruing to "persons residing and corporations organized in the United States or in a state thereof" over like claims of foreign creditors. Material parts of Section 977-b are listed as follows:

"1. An action may be instituted in the supreme court for the appointment of a receiver of the assets in this state of a foreign corporation, whenever such foreign corporation has assets or property of any kind whatsoever, tangible or intangible, within the state of New York, and (a) it has heretofore been or is hereafter dissolved, liquidated or nationalized or (b) its charter or organic law has heretofore been or hereafter is suspended, repealed, revoked or annulled, or (c) it has heretofore ceased or hereafter ceases to do business, whether voluntarily or otherwise or by reason of the expiration of the term of its existence or by revocation or annulment of its organic law or by dissolution or otherwise.

* * *

"16. Upon settlement of the receiver's account, the court must direct payment in the following order and manner:

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"a. The costs and expenses of the action and of the receivership and the commissions and allowances and attorneys' fees in connection therewith shall first be paid, and if the court is satisfied that the action has been of benefit to the creditors of the said defendant it may allow the plaintiff his reasonable expenses including attorneys' fees in connection with such action.

"b. The allowed claims, if any, of creditors with valid attachments issued out of any court in the state prior to the commencement of an action pursuant to this section, shall then be paid in the order of their priority. Attachments issued after the commencement of an action for the appointment of a receiver pursuant to this section shall be entitled to no priority by reason thereof.

"c. The allowed claims which prior to the appointment of a receiver hereunder accrued to or arose, wholly or partly, in favor of persons residing and corporations organized in the United States or in a state thereof and the allowed claims based on causes of action which accrued or arose in the state of New York shall then be paid.

"d. The allowed claims of all other creditors of the corporation shall then be paid.

"Any surplus remaining after making all of the aforesaid payments in the order mentioned shall then be paid to the stockholders of the corporation who have proved claims as such pro rata in accordance with their stockholdings, or in the discretion of the court, to the receiver or liquidator, if any, appointed in the domicile of the corporation or elsewhere, provided such receiver or liquidator has proved his right thereto."

There are few decisions construing this statute, which was originally enacted in 1936, and none construing the priority provisions of Subdivision 16. The scheme of priorities established by that subdivision seems to be fairly clear, however, even in the absence of construction. It is apparent that when a foreign corporation is put in receivership under the terms of the section, the expenses of the receivership, and other expenses provided for in Subdivision 16a, will first be paid from the New York assets of the corporation. After all payments under Subdivision 16a have been made, the remaining assets will be distributed first to the creditors named in Subdivision 16b, second to those named in 16c, and third to the creditors named in Subdivision 16d. If there is any surplus remaining after the payment of creditors entitled to payment under 16b, 16c and 16d, it will be distributed to the stockholders of the corporation or, in the discretion of the court, to the domiciliary receiver or liquidator, if any. The only further problem is to determine who the creditors are who are included in the provisions of Subdivision 16b, 16c and 16d, respectively. The following enumeration based upon citizenship, residence and place where the claim arose is submitted for each of the three classes of creditors:

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Subdivision 16b.

This class appears to include any creditor with a valid attachment issued out of a court of the State of New York prior to the commencement of receivership proceedings, regardless of whether such creditor is:

- (1) a citizen of the United States
- (2) a citizen of a foreign country
- (3) a resident of the United States, or
- (4) a resident of a foreign country

and regardless of whether his claim arose

- (1) in the United States, or
- (2) in a foreign country. 9/

Subdivision 16c.

This class appears to include any creditor not included in Subdivision 16a or Subdivision 16b whose claim arose in the State of New York, prior to the appointment of a receiver for the New York assets of the debtor corporation. It includes any such creditor regardless of whether he is:

- (1) a citizen of the United States
- (2) a citizen of a foreign country
- (3) a resident of the United States, or
- (4) a resident of a foreign country.

The class also includes any creditor not included in Subdivision 16a or Subdivision 16b whose claim arose outside the State of New York prior to the appointment of a receiver for the New York assets of the debtor corporation, provided such claim arose in favor of:

- (1) a person residing in the United States, or
- (2) a corporation organized in the United States or a state thereof.

9/ Where the New York assets of a foreign corporation have not been placed in receivership under Section 977-b, it appears that priority among attaching creditors of the corporation depends upon the order in which their attachments were levied and not upon the residence or citizenship of the creditors or upon the places where the creditors' claims arose. In Anglo-Continentale Trust M. V. Allgemeine, Etc., (1939) 13 N.Y.S. (2d) 397, a Netherlands corporation and a Liechtenstein corporation secured attachments against property in New York of a German corporation. This same property was later attached by a New York bank, as trustee for New York and foreign bondholders. The court stated in dictum that the "Trustee's subsequent attachment of such funds is subject to that of the plaintiffs [the attaching foreign corporations]." Cf. Guffanti v. National Surety Co., (1909) 90 N.E. 174.

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Subdivision 16d.

This class includes all creditors not included in Subdivisions 16a, 16b or 16c. The class appears to include the following creditors, among others:

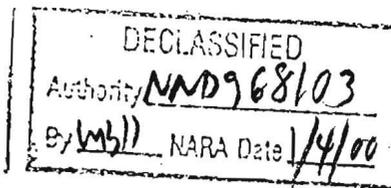
- (1) any creditor regardless of citizenship or residence, whose claim is not payable under section 16a, if such claim arose after the appointment of a receiver for the New York assets of the debtor corporation.
- (2) any creditor whose claim is not payable under Subdivision 16a or Subdivision 16b, if such claim arose outside the State of New York in favor of a resident of a foreign country or a corporation organized under the laws of a foreign country.

It is apparent that the scheme of priorities provided by Subdivision 16 of Section 977-b makes no distinction between creditors who are citizens of the United States and those who are citizens of foreign countries. It does make a distinction between residents of the United States and residents of foreign countries, but only to a limited extent. A creditor having a claim which arose in favor of a resident of the United States is entitled to priority in payment over a creditor whose claim arose in favor of a resident of a foreign country only if the latter claim arose outside the State of New York and is not secured by an attachment. This same limited distinction is made between creditors having claims which arose in favor of corporations organized in the United States and those having claims which arose in favor of corporations organized in foreign countries. It may be observed that the distinction between residents of the United States and residents of other countries, made by the statute, has reference to the person in whose favor the claim originally arose, and not to the person having title to the claim at the time of payment. It would appear, therefore, that a resident of a foreign country who is the assignee of a claim originally accruing to a resident of the United States would share on an equal footing with claimants who are residents of the United States, even though the claim did arise outside the State of New York.

Subdivision 16 of Section 977-b is of course applicable to the distribution of the assets of a foreign corporation only when such assets are placed in receivership under the provisions of that section. The grounds for bringing an action for the appointment of a receiver are set forth in subdivision 1 of the section, quoted above. Insolvency is not one of the grounds for the bringing of such action, but it is likely that when any of the enumerated grounds exists, insolvency will often be present. It is apparent therefore that the scheme of distribution of the New York assets of a foreign corporation contained in Subdivision 16 of Section 977-b is not necessarily a rule for the distribution of such assets where the corporation is insolvent. It is such a rule only if insolvency is accompanied by the dissolution, liquidation, nationalization or ceasing to do business,

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etc.,^{10/} of the foreign corporation plus the institution of receivership proceedings against the New York assets of the corporation. Consequently it would not be necessary for any plan devised for the licensing of payment of creditors' claims out of the blocked New York assets of a foreign corporation to follow the scheme of priorities contained in the statute, except perhaps in cases where such assets have been placed in receivership under the provisions of the statute.

C. Priority in Absence of Statute

In the absence of a statute providing for a different rule, it appears that under the law of New York, no priority based upon citizenship or residence of the creditor, or upon the place where the claim arose, would be accorded to anyone in the distribution of the assets in New York of an insolvent foreign corporation. People v. Granite Provident Ass'n., (N.Y. 1900) 55 N.E. 1053. The court in that case announced the rule to be as follows:

"All creditors of a corporation, wherever residing, are entitled, in case of insolvency, to have the general assets distributed among them upon principles of perfect equality."

In Drury v. Doherty, (1926) 215 N.Y.S. 613, the court said:

"If the corporation is absolutely insolvent in the absolute sense, the preference extended to our citizens can only cover the mere determination of the amount of their claims in this jurisdiction. Courts are without power to favor domestic creditors in the actual distribution, which must be made upon the principle that equality is equity."

In Mitchell v. Banco De Londres, (1920) 183 N.Y.S. 446, an action in which plaintiff, a creditor of an insolvent Mexican corporation, sought the appointment of a receiver to preserve the assets of the corporation in New York and to enjoin the Comision Monetaria of the Mexican Government from collecting them, the court said:

"In a case, however, where a corporation is in the hands of a receiver or liquidator appointed by a foreign state it has been repeatedly held that a creditor in this state, whether his claim is reduced to judgment or not, must recognize the insolvency proceedings in the foreign state, and he can gain no preference over any other creditors of the corporation upon the assets of the insolvent corporation which may be located in this state."

The federal courts in New York have expressed the same view. Thus in Sands v. E. S. Greeley & Co., (C.C.A., 2d, 1898) 88 F. 130, the court said:

^{10/} See Subdivision 1 of Section 977-b.

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"Courts of justice make no distinction between foreign and domestic creditors when their claims are of equal validity. After the appointment of the ancillary receivers, all the creditors of the insolvent corporation who had not acquired some priority of lien upon its assets were upon an equal footing. . . .

"The orders which have been appealed from were a proper exercise of judicial discretion. If they had directed appropriation of the fund to satisfy the debts of resident creditors except as to the surplus, the rule that equality among creditors is equity would have been ignored."

The rule announced in these cases is in harmony with the rule relative to receiverships expressed in Restatement, Conflict of Laws (1934) sec. 554, as follows:

"Subject to valid claims against or liens on specific funds and to preference given to creditors of a particular class, all creditors of a receivership/ estate who have proved their claims in a competent court in which there are receivership proceedings are entitled to share pro rata in any application of the assets of the local receiver to the payment of claims, irrespective of the sources of such assets, or of the residence, place of business, domicil, or citizenship of the creditors." (Underscoring supplied).

Among the few cases cited in the various state annotations to the Restatement, are People v. Granite Provident Ass'n, supra, and In re Stoddard, supra. The latter case will be stated in more detail below.

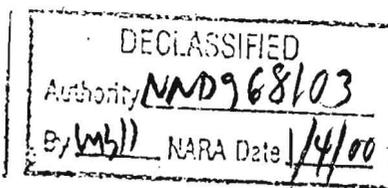
The rule that a state will not, in the absence of statute, accord priority to the claims of domestic creditors in the distribution of the assets within its borders of an insolvent foreign corporation appears to be the general rule followed in other states of the United States as well as in New York. Brunner v. York Bridge Co., (1916) 90 S.E. 233; Thornley v. J.C. Walsh Co., (Mass. 1910) 92 N.E. 1007; Engineering Co. v. Perryman Electric Co., (N.J. Eq. 1933) 166 A. 461, aff'd. (1933) 168 A. 298; see Torrington Co. v. Sidway-Topliff Co., (C.C.A. 7th, 1934) 70 F.(2d) 949.

In the Thornley case the court stated:

"In an ancillary receivership in our courts, preference will not be given to domestic creditors unless it appears that there is danger of discrimination against them in the forum of the principal receivership, and then only so far as is necessary to counteract such discrimination."

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And in the Perryman case, it was said:

"It is a well established rule of law that all creditors of a corporation, wherever residing, are entitled, in case of its insolvency, to have its general assets distributed among them upon principles of perfect equality, and that the courts of one state have no right to favor domestic creditors."

In none of the above cases from which quotations have been given does it appear affirmatively that claims of creditors who were not citizens or residents of the United States were involved. For that reason a statement of the fact situations involved has not been given, since all of the cases are distinguishable on their facts from a case involving the relative rights of creditors who are citizens or residents of the United States and those who are citizens or residents of foreign countries. The language used by the courts in these cases, however, is significant. It has not been limited to a statement that local creditors are entitled to no priority over creditors of other states of the United States. It has, rather, been to the effect that all creditors of a corporation, wherever residing, are entitled, in case of insolvency, to have the general assets distributed among them upon principles of perfect equality.

In In re Stoddard, supra, the question of whether citizens or residents of the United States were entitled to priority over citizens or residents of foreign countries in the distribution of the New York assets of an insolvent foreign corporation was squarely presented. In that case a Norwegian insurance corporation became insolvent and a domiciliary receiver for the corporation was appointed in Norway. The company was doing business in New York and had been required by a statute of New York to deposit assets in that state for the protection of policy holders in the United States who obtained their policies from agencies of the company doing business in the United States. Upon the insolvency of the insurance company, the New York state superintendent of insurance took possession of the assets deposited in the state. Three classes of claims were filed with the superintendent for the purpose of having the assets in his possession applied in satisfaction of such claims. These were: (1) claims based on policies issued to residents or citizens of the United States by agencies of the insolvent corporation doing business in the United States, (2) claims based on policies issued in foreign countries to residents of the United States, and (3) claims based upon policies issued in foreign countries to residents of foreign countries. The trial court held that claims of the first class should be paid first since the statute required the deposit of assets in New York for the protection of persons having claims in this class. The trial court also held that any surplus of assets after payment of the first class of claims should be applied to the satisfaction of claims held by citizens and residents of the United States upon policies issued by the insolvent corporation through its foreign agencies. The trial court made no provision for payment of the claims of citizens and residents of foreign countries whose policies were issued by foreign agencies of the corporation. On appeal to the Court of Appeals it was contended in support of the trial court's ruling (which had

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been affirmed by an intermediate appellate court) that "under general principles of equity and public policy it is the duty of the superintendent having these assets in his possession to apply them to the satisfaction of the claims of domestic creditors." The Court of Appeals after construing the statute requiring the deposit to be designed for the protection of only such residents and citizens of the United States as had acquired their policies through agencies of the insurance company in the United States, was presented with the problem of whether other citizens and residents of the United States were entitled to priority in payment from the surplus over citizens and residents of foreign countries. The court held in the negative, thus reversing the ruling of the lower courts. The court held that no priority should be accorded and that the surplus assets should be transmitted to the domiciliary receiver in Norway. The court said:

" . . . we are brought to the proposition . . . that there is some principle of equity, comity, or public policy which authorized the application of the funds in the hands of the superintendent to payment in full of local creditors before transmission of any surplus to the primary or domiciliary receiver /in Norway/. We know of no such principle which, under the circumstances of this case, is recognized by our courts . . . The ordinary rule of the distribution of the assets of an insolvent is equality amongst creditors of the same class, and this rule requires, subject to the consideration hereinafter discussed, transmission of the funds in the hands of the superintendent as ancillary receiver, and not subject to any particular claim or lien as hereinbefore discussed, to the primary receiver /in Norway/ for distribution pro rata amongst the creditors of the Insurance Company."^{11/}

It is clear from the Stoddard case that the rule in New York is that in the absence of statute, there is no discrimination between claims of citizens and residents of the United States and claims of citizens

^{11/} In commenting on In re Stoddard, the Court of Appeals said in In re People (N.Y. 1928) 163 N.E. 129: "/ In re Stoddard/ we held that only those who dealt with the company in the United States were entitled to the protection of the statute and 'to share in the distribution made thereunder.' Other creditors, including American citizens, may share only in the distribution of assets of the foreign liquidators, appointed in the jurisdiction where the corporation is domiciled, to whom the superintendent must transmit any surplus of the funds in his charge, remaining after the payment of those creditors who are entitled to payment therefrom." (Underscoring supplied).

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and residents of a foreign country in the distribution of the assets of an insolvent foreign corporation. The case therefore stands for the proposition that no priority is accorded to domestic claims over foreign claims, unless otherwise provided by statute. It is true that domestic claims were in that case accorded priority over claims which were "foreign" for the sole reason that they accrued abroad, or accrued on policies sold to American citizens abroad, but this result was reached from a construction of the statute which was held to create the priority.

D. Federal Bankruptcy Act

Although it appears that under New York law foreign and domestic claims would participate equally in the distribution of the assets in New York of an insolvent foreign corporation except where a different rule is provided by statute, it yet remains to be seen what the rule is under the Federal Bankruptcy Act in cases where that act applies.

The federal courts have jurisdiction to adjudicate the bankruptcy of corporations which are domiciled in foreign countries, but which have property in the United States. This power is conferred by section 2 of the Bankruptcy Act, 30 Stat. 545, as amended, (U.S.C. title 11, sec. 11) which provides in part:

"a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy ^{12/} and are hereby invested, within their respective territorial limits as now established or as they may hereafter be changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to --

"(1) Adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions; . . ."

^{12/} "Courts of Bankruptcy" are defined in section 1 of the Bankruptcy Act, 30 Stat. 544, as amended, (U.S.C. title 11, sec. 1) as follows:

"'Courts of bankruptcy' shall include the district courts of the United States and of the territories and possessions to which this Act is or may hereafter be applicable, and the District Court of the United States for the District of Columbia."

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It appears from this section that a foreign corporation (other than a corporation which, under section 4 of the Act, is not a person who may become a bankrupt)^{13/} which does not have its principal place of business, reside, or have its domicile in the United States, but which has assets in the State of New York may be adjudicated a bankrupt by the District Court of the United States for the district where the assets are located. A foreign corporation (other than a corporation which, under section 4 of the Act, is not a person who may become a bankrupt)^{13/} which has property in the State of New York and which has been adjudged a bankrupt by a court of competent jurisdiction in a foreign country may likewise be adjudicated a bankrupt by the district court for the district where the assets are located. Cf. In re Neidecker, (C.C.A. 2d, 1936) 82 F. (2d) 263; In re Berthoud, (S.D. N.Y. 1916) 231 F. 529, appeal dismissed (1916) 238 F. 797; In re Aktiebolaget Krueger & Toll, (C.C.A. 2d, 1938) 96 F. (2d) 768. In the Neidecker case the question was whether the District Court of the United States for the Southern District of New York had jurisdiction to adjudicate as bankrupt a French partnership which had assets within the court's territorial jurisdiction and which had been adjudged bankrupt by a court in France. The court held that if the partnership did not (as was contended) have its principal place of business, its residence or its domicile in the United States, the District Court had jurisdiction under the clause of section 2 of the Bankruptcy Act giving the court jurisdiction to adjudge persons bankrupt "who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions". The court also held that if the partnership did have a residence, domicile or principal place of business in the United States the court had jurisdiction under the clause providing for jurisdiction over persons "who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions".

^{13/} Section 4 of the Bankruptcy Act, 30 Stat. 547, as amended, (U.S.C. title 11, sec. 22) provides in part:

"Who may become bankrupts.--a. Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this Act as a voluntary bankrupt.

"b. Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, except a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of \$1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial and shall be subject to the provisions and entitled to the benefits of this Act. . . ."

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Since it appears that the appropriate federal court will ordinarily have jurisdiction to adjudicate as bankrupt a foreign corporation having assets in the State of New York, the next question is whether domestic claims have priority over any of the different types of foreign claims in the distribution of the bankrupt's assets. The answer to this question appears to be that domestic claims as such have no priority and that creditors of the same class are entitled to share pro rata in the distribution of the bankrupt's assets irrespective of their citizenship or residence and irrespective of the places where their claims arose.

Section 64a of the Bankruptcy Act, 30 Stat. 563, as amended, (U.S.C. title 11, sec. 104a) establishes a classification of priorities for the payment of claims against the estate of a bankrupt. Claims accorded priority are divided into five classes and it is provided that such classes of claims are to be paid in the order of their priority in advance of the payment of dividends on claims not having priority. Roughly, the five classes of claims given priority are (1) expenses of the bankruptcy proceedings, (2) certain wage claims, (3) certain costs and expenses of creditors, (4) taxes, (5) claims entitled to priority under other laws of the United States.^{14/} There is no priority based

14/ The full text of section 64a is as follows:

"Debts which have priority.---a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed \$600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through

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upon the citizenship or residence of the claimant or of the person to whom the claim originally accrued. Neither is there any priority based upon the place where the claim accrued. Presumably none was intended.

The construction placed on section 64a by the courts would appear to exclude any possibility that under the Bankruptcy Act domestic claims are to have priority in payment over similar foreign claims. The cases have been uniform in holding that the system of priorities established in the Act is exclusive and that priorities not therein provided for shall not be allowed.

In City of Lincoln, Neb. v. Ricketts, (C.C.A. 8th, 1935) 77 F. (2d) 425, it was contended that the claim of a municipal corporation against a trust company was entitled to priority in payment from the company's bankrupt estate on the ground that the city as a sovereign had a prerogative right of priority. The court thought that no such priority to the sovereign was provided for in section 64. The court held "the right of priority in payment of claims against a bankrupt estate, other than those based upon specific liens, must be found in the Bankruptcy Act". Finding no priority in the Act of the type contended for, the court denied the city's contention. The case was reversed in Lincoln v. Ricketts, (1936) 297 U.S. 373 but solely on the ground that the priority claimed was provided for in section 64 of the Act.

14/ (Cont'd.)

the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under this Act, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: Provided, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: And provided further, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States is entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law: Provided, however, That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy."

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In In re Wilkes-Barre & E.R. Co., (M.D. Pa. 1942) 46 F. Supp. 12, the State of Pennsylvania asserted priority for the payment of its claim for money expended in restoring crossing areas of the bankrupt railroad company. No priority was accorded to claims of this type by section 64a of the Bankruptcy Act, and the court therefore refused to allow preferential payment to the state, holding that "priority in the payment of creditors' claims will not be recognized unless it is a claim or debt which falls within the specific provisions of section 64, sub. a. of the Bankruptcy Act."

In Southern Bell Telephone & Telegraph Co. v. Caldwell, (C.C.A. 8th, 1934) 67 F. (2d) 802, the claimant contended it had priority because its claim was of a type which would be given priority under equity rules if the debtor had gone into receivership in equity instead of bankruptcy. The court held that the system of priorities set up in section 64 was exclusive and denied the priority. The court quoted with approval the language of the referee in the court below who had said that in his opinion "section 64b, section 104b, title 11 U.S.C.A. of the Bankruptcy Act is exclusive as to the classes of debts which are entitled to priority in payment, in advance of payment of dividends to creditors, and petition's claim does not fall within any of the classes set forth in said section".^{15/}

In In re James Butler Grocery Co., (E.D. N.Y. 1938) 22 F. Supp. 998, aff'd. (1938) 100 F. (2d) 376, it was contended that administrative expenses incurred by the bankrupt in reorganization proceedings preceding the bankruptcy should be paid from the bankrupt's estate as a preferential claim. Such expenses would have had priority in the reorganization proceedings but were not specifically accorded priority under section 64 of the Bankruptcy Act. The court denied priority stating that "Section 64(b), 11 U.S.C.A. §104(b), of the Bankruptcy Act is exclusive as to the classes of debts which are entitled to priority in payment in strict bankruptcy proceedings, and there is no power vested in the bankruptcy court to order preferential payments not explicitly authorized by this section".^{15/}

The exclusive character of the priorities provided for in section 64 of the Bankruptcy Act was clearly pointed out in In re Penticoff, (D. Minn. 1941) 36 F. Supp. 1. There it was contended that wage claims not falling within the second class of priority claims designated in section 64a were entitled to priority over tax claims included in the fourth class. The court denied the contention, stating that "Section 64 of the Bankruptcy Act provides a hard and fast categorical classification of claims against a bankrupt estate, and the order in which said claims are to be paid. This order of priorities cannot be varied or departed from".

^{15/} The classes of claims entitled to priority have, since the amendment of section 64 on June 22, 1938, 52 Stat. 874, been contained in sub-section a of that section, rather than in sub-section b thereof.

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The rule expressed in the above cases to the effect that the priorities provided for in section 64 of the Act are exclusive, appears to preclude the possibility that domestic claims are to be given priority in bankruptcy proceedings over foreign claims.^{16/} Since section 64 does not distinguish between claims of residents and citizens of the United States and claims of residents or citizens of foreign countries, neither class of claims has priority over the other. For the same reason claims arising in the United States have no priority over claims arising abroad.

Cases where the question of priority of domestic over foreign creditors, or of domestic over foreign claims, has been discussed are few. It has been said that the main feature of all bankrupt laws throughout the civilized world is that the bankrupt's estate must be divided equally among his foreign as well as his domestic creditors. In re Goodfellow, (D. Mass. 1870) 10 Fed. Cas. 594, Fed. Cas. No. 5536. With reference to our own bankruptcy act it has been said that such act "contemplates an equal division among the bankrupt's creditors with no preferences except those specially designated by statute". In re Moore, (C.C.A. 4th, 1926) 11 F. (2d) 62. In In re Berthoud, *supra*, it was contended that the court had no jurisdiction to adjudge an alien bankrupt. The court held that it did have jurisdiction and in pointing out the general purposes of the Act said that "it is fair to assume, as matter of policy and comity, that Congress intended to give all persons, whether citizens or residents, or neither, equal opportunity to share in the distribution of the [bankrupt's] property". In In re Aktiebolaget Krueger & Toll, (S.D. N.Y. 1937) 20 F. Supp. 964, *aff'd.* (1938) 96 F. (2d) 768, a Swedish corporation had been liquidated in Sweden and later had been adjudged bankrupt in the District Court of the United States for the Southern District of New York. Upon a petition for review of certain orders of the referee in bankruptcy, the court quoted with approval an unpublished earlier opinion rendered in the same case which stated that

^{16/} It would seem that where both domestic claims and foreign claims are within one of the classes of claims expressly given the right of preferential payment under section 64, the domestic claims would not have priority over the foreign claims within the class. For example, a case may be supposed where a French corporation has branches both in Paris and New York. The corporation is adjudged bankrupt in one of the federal courts of New York. Claims for wages, not in excess of \$600 each, which were earned within three months before the commencement of the bankruptcy proceedings are presented by French employees of the Paris branch and by American employees of the New York branch. Both types of claims would be entitled to priority as class 2 claims under section 64. But neither type would appear to have priority over the other, since it has been held that since Congress has set up no order of priority within a class of preferred claims, the court may not fix priorities within the class. In re Columbia Ribbon Co., (C.C.A. 3rd, 1941) 117 F. (2d) 999.

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"any administration of the property in America of the Krueger & Toll Company /the bankrupt/ would be without any thought of preferential treatment of American creditors unless indeed preferential treatment were given in Sweden as against American creditors and the court would earnestly hope that in Sweden all creditors would be treated alike as to the assets of this company so that this court dealing with American assets would be not only justified but morally and doubtlessly legally compelled to accord the same treatment to Swedish and other creditors as it would accord to American creditors". (Italics by the court)

The principal cases where it has been contended that certain creditors are entitled to priority in payment from a bankrupt's estate because of their residence or citizenship are cases where the creditors' claims were asserted to fall within the seventh class of priorities established in section 64 of the Bankruptcy Act, as in force before the amendment thereof in 1938. That section then provided that "debts owing to any person who by the laws of the States or the United States is entitled to priority" were to be preferred as seventh class priority claims. It was contended in several cases that where a state statute provided that claims of residents of the state had priority over claims of non-resident corporations in the distribution of the assets within the state of an insolvent foreign corporation, the priority established by the statute should carry over into bankruptcy proceedings. This view was rejected in In re C. D. Hauger Co., (N.D. Tex. 1931) 54 F. (2d) 117. The court there held that a claim of a resident which was entitled to priority under the state statute did not have priority as a seventh class claim under section 64 of the Bankruptcy Act. The majority view, however, was to the contrary. Berger v. Kingsport Press, (C.C.A. 6th, 1937) 89 F. (2d) 444, cert. den. (1937) 302 U.S. 738; In re Boggs Rice Co., (C.C.A. 4th, 1933) 66 F. (2d) 855. In these cases the courts held that claims of residents of the state where the assets were located were entitled to priority over the claims of corporations residing outside the state, since the former were "debts owing to any person who by the laws of the States . . . is entitled to priority". It appears, therefore, that prior to the amendment of section 64 in 1938, a priority based upon residence or citizenship would have been allowed under the Bankruptcy Act, provided such priority was authorized by a constitutional statute of the state where the bankrupt's assets were located. Such a priority would not appear to be allowable now, however, in view of the amendment of section 64 in 1938. By that amendment the priorities established by the section were reclassified and transferred from subsection b to subsection a. The classes of priorities were reduced in number from seven to five. Fifth class priority claims under the amended section correspond to seventh class claims under the old section. Claims in the fifth class under the amended section are those which are "debts owing to any person, including the

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United States, who by the laws of the United States [is] entitled to priority" The priority in favor of debts owing to any person who by the laws of the states is entitled to priority has been eliminated. The effect of the amendment of 1938 has been held to "relegate to the class of general creditors those whose claim to priority is found only in state laws". In re Famous Furniture Co., (E.D. N.Y.) 42 F. Supp. 777. It is therefore concluded that domestic claims, even though they are entitled to priority over foreign claims by state law, are entitled to none under the Bankruptcy Act, as now in force.

The conclusion that domestic claims are entitled to no priority over foreign claims in bankruptcy proceedings is fortified by section 65a of the Bankruptcy Act, 30 Stat. 563, as amended, (U.S.C. title 11, sec. 105a) which provides the rule for distribution of the bankrupt's estate after payment of claims having priority. Section 65a provides:

"Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured".

This language, like that of section 64, makes no distinction between claims based upon residence or citizenship or place where the claim arose. Its manifest purpose is to effect an equal distribution to all creditors with allowed claims which are not entitled to priority or secured. Moore v. Bay, (1931) 284 U.S. 4. It means no more than that dividends paid to non-secured creditors shall be pro rata except where there is a priority given by section 64 or by agreement of the parties. In re Aktiebolaget Krueger & Toll, (C.C.A. 2d, 1938) 96 F. (2d) 768.

Any doubt that under the Bankruptcy Act, foreign claims are to be treated on a basis of equality with domestic claims of the same class would appear to be dispelled by subsection d of section 65 of the Act. That subsection provides:

"Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy,^{17/} creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such court shall be paid any amounts."

No cases are found which construe this subsection. In 2 Collier, Bankruptcy (12th ed. 1921) p. 1028, it is said:

^{17/} See footnote 12 for definition of "courts of bankruptcy".

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"Subsection d applies only to cases where the bankrupt has been so adjudged not only in the United States but in a foreign country. It is intended to accomplish equality of payment to resident creditors, wherever the law of such a country does not permit such residents to prove thereon. The subsection is rarely available and requires no discussion."

Evidently it was the author's view that the meaning of the subsection was clear. This seems to be the case. Its obvious purpose is to prevent a discrimination against resident creditors, not to create one in their favor. By specifying the case where resident creditors are to be paid first out of the bankrupt's assets, viz. where a preferential payment has been obtained by "other creditors", it would seem that in all other cases resident and foreign creditors are to be treated alike. It may be noted that even where resident creditors have been discriminated against in foreign courts they have priority over the creditors receiving preferential payments in such courts only to the extent necessary to effect equality of payment to all creditors. If, then, resident creditors are accorded no better than equal treatment with foreign creditors in cases where the latter have obtained preferences in foreign courts, it would seem that, a fortiori, resident creditors would have no priority in cases where the foreign creditor's have not obtained preferences in foreign courts.

Wayne P. Dyer

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Office of the Attorney General
 Washington, D.C.

January 14, 1948

Dear John:

This is in response to your letter dated January 9, 1948, suggesting a program for the disposition of blocked assets in the United States in furtherance of the European Recovery Program.

It is proposed that after three months' public notice, assets then remaining blocked, including assets not then certified by the appropriate foreign government as free of enemy taint, be transferred to the jurisdiction of the Department of Justice. After jurisdiction has been transferred, a new census of such blocked funds would be taken and made available to each interested government receiving aid under the European Recovery Program. Countries involved would be requested to investigate the status of funds so reported so that property free of enemy taint could be certified, and property not free of enemy taint vested. Property not certified prior to the three months' deadline date and not reported to foreign governments would be vested subject to return under existing law if the friendly or neutral status of the property should be established.

As you know, governments of certain nations likely to receive aid under the European Recovery Program require their nationals to declare their holdings of foreign exchange assets. Some of these countries require that part or all of such holdings be turned over to the government in exchange for local currency; in addition, these and other countries have exchange controls requiring that permission be obtained from the government for any expenditure of foreign exchange assets. To the extent that the foreign governments involved are able to obtain control and make use of the foreign exchange assets of their nationals in the United States, their requirements under the European Recovery Program for assistance in the form of dollar assets will be reduced. It has been estimated that

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there is from \$300,000,000 to \$400,000,000 owned by nationals of those countries in the United States which has not yet been disclosed to the governments concerned and which, if disclosed, could be fairly easily mobilized. Accordingly, it would seem desirable for the United States to cooperate with such foreign governments by making available to them information as to the location of such foreign exchange assets in the United States.

Information on the assets in question now in the possession of this Department was obtained pursuant to the provisions of the Trading with the Enemy Act, as amended. Section 5(b) of that Act (55 Stat. 839) authorizes the President to require any person to furnish such information, subject to penal sanctions. The Act contains no restrictions upon the use which may be made of the information by the government; moreover, it provides that vested property shall be dealt with "in the interest of and for the benefit of the United States", and the Committee Reports of Congress have declared that the objective of the Act was to establish "a system which can affirmatively compel the use and application of foreign property in /the best interests of the United States/". (H. Rept. No. 1507, 77th Cong., 1st Sess., p. 3.) It would seem that disclosure of foreign property holdings in the United States to the foreign governments concerned as a means of reducing the burdens of the European Recovery Program on the American taxpayer would be "in the interest and for the benefit of the United States".

It appears, therefore, that this Department could, without further legislative authority, proceed with a program of disclosure to the governments of countries participating in the European Recovery Program of all information in its possession as to ownership of assets held by nationals of those countries. Such countries could avail themselves of the reports now on file with this Department in a manner so as not to impose an undue administrative burden. Up-to-date information obtained by a new census could later be made available.

The foregoing plan in general appears to be sound and workable if it fits in with the program of the President. In this connection, the advice of the Director of the Bureau of the Budget was recently requested with respect to proposed

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reports on legislation that would require the disclosure of the information under consideration. (H.R. 4576 and H.J.Res. 268.)

This Department is of the view, however, that the vesting of property held in the names of friendly foreign nationals or nations would be appropriate only if there appears reasonable grounds to suspect cloaking. It would appear that a presumption of enemy interest would arise from failure to report and obtain certification of such property within the time limitation. This presumption would be materially strengthened if the foreign governments concerned granted amnesty to their nationals who have thus far failed to report their assets.

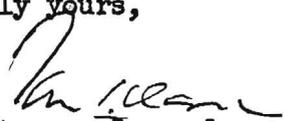
Certain other details of the program should be further considered. As an example, information obtained from the contemplated census might indicate the necessity of reconsidering the proposed \$5,000 ceiling. Further, the last sentence in paragraph (b) on page 2 seems to indicate that, for example, assets in this country held by a foreign bank as cover for dollar accounts could, after vesting, be returned to the depositor of the foreign bank as "the beneficial owner" upon proof of freedom from enemy taint. Such a return would raise difficult questions. Questions such as these, however, may be ironed out later. It does not appear necessary that they be settled now.

With the qualifications stated above, the program is plainly within existing statutory authority. This Department is of the view that additional formal Congressional approval is neither necessary nor desirable although full disclosure of the program should be made to the Congress at this time. Full disclosure should also be made of such estimates as are available of the amounts involved. These amounts may prove to be less than generally supposed.

With respect to the free assets owned by foreign nationals, it is understood that the Treasury Department is now actively studying the problems presented. We will be glad to give you any assistance you may require in this respect.

With kind personal regards,

Sincerely yours,


 Attorney General

Honorable John W. Snyder
 Secretary of the Treasury
 Washington, D. C.

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The Departments of Justice and Treasury have discussed the ways and means by which the residual blocking operations of Foreign Funds Control could be terminated as rapidly as possible consistent with achieving this Government's objectives of (1) discovering enemy assets concealed in blocked accounts and (2) assisting European governments which receive financial assistance under the European Recovery Program (referred to hereafter as recipient countries) to locate, control or otherwise obtain the benefit of the blocked assets in the United States of their resident citizens. To this end, the program set out below has been formulated by and has the approval of the two Departments.

Three months public notice will shortly be given, after which assets then remaining blocked, including assets not certified by the appropriate foreign governments as free of enemy taint, will be transferred to the jurisdiction of the Office of Alien Property in the Department of Justice. That Office will take a new census of the assets which remain blocked as of the deadline date. In order effectively to help the recipient countries, the Office of Alien Property will then promptly carry out the following policies:

(a) To deal with the directly-held assets by making available to the governments of such countries the information from the new census of blocked assets of their citizens, including juridical persons, residing in their territories which remain uncertified as of the public deadline date referred to above. Each country receiving such information will be required to investigate the beneficial ownership of property held in the names of their citizens for the purpose of discovering any enemy interest, so that enemy property will not escape this Government. Pending a reasonable period for such investigations, such property will not be vested but will remain blocked under the jurisdiction of the Office of Alien Property. If those investigations show that the assets are owned by residents of the country receiving the information, the assets will be released.

(b) To deal with indirectly-held assets by a vesting program with respect to accounts which remain uncertified after the deadline date. Processing of uncertified assets in Swiss and Liechtenstein accounts for vesting under applicable law as enemy property will be started immediately after the receipt of the census information by the Office of Alien Property. The vesting program will also be applied to uncertified assets held indirectly

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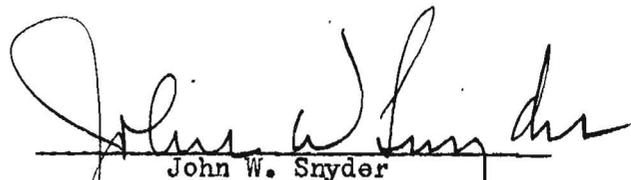
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through recipient countries where the program described in (a) above does not result in disclosure to the beneficial owner's government. In the absence of definite evidence of non-enemy ownership, full weight will be given to the presumption of enemy ownership arising from the failure to obtain certification. Evidence of non-enemy ownership or interest offered either before or after vesting would be checked in accordance with the usual investigative procedures of the Office of Alien Property. These procedures involve disclosure to the governments of the countries of which persons claiming legal or beneficial interests are residents. Of course, any vested assets which are proved to be non-enemy may be returned under existing law applicable to the return of vested property.

To permit both ourselves and the recipient countries to concentrate on the areas where important results are likely to be obtained, accounts containing small amounts of property, say up to \$5,000, will be unblocked in the near future without requiring certification or other formalities except where a known German, Japanese, Hungarian, Bulgarian, or Rumanian interest exists. So far as private assets of recipient countries are concerned, it is estimated that this action will eliminate about 50% of the accounts involved, but will release less than 5% of the blocked assets which are unknown to the recipient countries.

The President has authority under the Trading with the Enemy Act to put the above program into effect. Because of the serious policy considerations involved, the Congress will be informed during the hearings on the European Recovery Program of our intention, unless the Congress objects, to carry out the information and vesting policies described above.


 John W. Snyder
 Secretary of the Treasury



Tom C. Clark
 Attorney General

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January 22, 1948

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(Signed) John W. Snyder

John W. Snyder

(Signed) Tom C. Clark

Tom C. Clark
 Attorney General

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