

CHAPTER III

PERIOD OF PROTECTIVE BLOCKING, APRIL, 1940-JUNE, 1941

The period from 1933 to 1940 marked the exodus of wealth to the United States from foreign countries, particularly those within the European Continent. Simultaneously with the rise of Hitler, there was apparent a gradual shifting of credit and investments to this country. Securities and deposits came in large quantities. First, such wealth came from the people within Germany; then from the people in the countries neighboring Germany, who were in the path of German aggression; and then from the governments and central banks of these very countries.

In September, 1939, war broke out in Europe. The European situation was acute. German tactics of aggression were already known to this government. Reports were in possession of this government that the Germans, after their entrance into Czechoslovakia, forced the residents of Czechoslovakia to turn over to them funds they owned in the United States. This fact, coupled with this government's recognition that in the past ten years it had become the safehaven for European wealth, caused this government to reexamine the tools it could use to guard these monies and credits. The documents pertaining to the so-called freezing control, and which were relegated to the Treasury safes in September, 1938, were again "brushed off."

On April 8, 1940 Germany invaded Denmark and Norway. On April 10, 1940, the President issued Executive Order No. 8389, as amended, commonly referred to as the "freezing order". This action was taken under Section 5(b) of the Trading with the enemy Act, as amended, and was promptly ratified by Congress. It was directed towards the protection of property within the United States of friendly

aliens and thus confirmed "an international belief and an international faith in the integrity of the United States Government that it will protect, safeguard and serve the property even of aliens that is legally and lawfully in the United States." In brief, it had the effect of freezing in the United States some \$92,000,000 of Danish assets and \$175,000,000 of Norwegian assets. Transactions relating to this property were prohibited unless permitted under license by the Secretary of the Treasury. As a result, Danish and Norwegian property in the United States was not permitted to become part of the fruit of Germany's conquest. German aggression continued. Parallel with the progress of German aggression the United States took defensive measures to protect foreign assets in the United States belonging to the countries who were the victims of this aggression.

Thus, on May 10, 1940, the freezing control was extended to about \$1,619,000,000 of Netherlands assets, \$76,000,000 of Belgian assets, and \$48,000,000 of Luxembourg assets. On June 17, the assets of France in the United States were blocked; on July 10, the assets of Latvia, Esthonia, and Lithuania were covered; on October 9, Rumania; March 4, 1941, Bulgaria; March 13, Hungary; March 24, Yugoslavia; and April 28, 1941, Greece.

The freezing control was this country's answer to the German challenge for control of these dollar assets. Through its medium the United States served notice to the world that it had a definite and direct interest in the use to which these assets were put and that the United States reserved the right to prevent any attempted use of such assets in a manner harmful to our defense efforts and our economy; that persons who placed their assets in this country out of confidence in our free institutions and our integrity will not have that confidence violated by our permitting such assets to be wrested from their true owners.

Moreover, an invasion or other revolutionary change in the political and economic life of a country vitally precipitates conflicting claims to the ownership of property. The freezing control served a definite function in minimizing the liabilities and responsibilities of American banks and other business institutions against the assertion of such conflicting claims pending ultimate clarification as to the true ownership of such property.

A. EARLY ADMINISTRATIVE ORGANIZATION

1. Internal Organization

During the first period in the operations of Foreign Funds Control, the organization created to handle the problem was of a very informal character. The responsibility for the administration of the Executive Order was reposed in the Office of the Secretary. An assistant was appointed to the Secretary of the Treasury to supervise its administration; reports to the Secretary were made through the General Counsel. Personnel was borrowed from other operating divisions of the Treasury — from the Division of Monetary Research and from the Office of the General Counsel.

When the freezing control came into effect in 1930, policy was formulated incidental to the licensing of various transactions. There was no pre-conceived idea of which way we were going with respect to the administration of the freezing control; but, instead, the policy was developed on the basis of problems which were presented to the Control daily in the form of applications. The small handful of people who initially constituted the so-called staff of Foreign Funds Control looked at practically every application filed, or at least the typical cases in each category. The very problems were dealt with when action was taken on a case, whether affirmative or negative. It was obviously logical to

act on the next similar case in the same manner and thereby was developed a policy derived from the problems submitted to the freezing control.

Obviously, this was an unsatisfactory form of organization for handling applications and developing policy, particularly as more and more countries were covered by the freezing control. Complex problems increased, requiring the concentrated time of the top staff. At the same time the volume of applications increased so that some organization was required for their handling.

The initial administrative set-up of Foreign Funds Control was established on a geographic basis. Applications involving the use of Norwegian and Danish assets, regardless of subject matter were handled by one group; applications involving accounts of the Netherlands were handled by another, etc. The remittance policy typifies the underlying reason why it was considered important to handle the problems on a geographic basis. For example, it was determined that remittances could be made to France against blocked dollars but they could be made to Norway only against free dollars. Obviously, remittances made against free dollars were more undesirable from the point of view of the interest of the United States than remittances effected against blocked dollars. It was important to avoid putting free dollars at the disposal of the Norwegian banks which were under the control and domination of the Axis.

It was soon found that the procedure for handling applications on a geographical basis could not be the exclusive basis for organization since it became apparent that there were factors to be taken into consideration other than the area involved. We began to deal with people in the United States who were blocked nationals. More and more refugees were seeking security in the United States. It made very little difference whether the refugee, provided he was a satisfactory person, was a French national, Belgian, Dutch, Norwegian or Danish

national -- if he was a satisfactory person and had some money here and wanted money to live it did not make a great deal of sense to treat the Norwegian differently, more favorably or less favorably than the Frenchman. There were other problems such as those involving estates, trusts, and business enterprises in which nationals of various blocked countries had an interest. Obviously, the operation of a French owned enterprise in this country and the operation of a Norwegian enterprise in this country should be treated the same way. Neither would be allowed to operate in a way which would benefit the Axis.

Accordingly, it appeared desirable to modify the organization of Foreign Funds Control along lines which would permit consideration of certain groups of applications on the basis of type of transaction involved. Groups were organized to treat with applications relating to purchase and sale of securities; ships and shipping; strategic materials; etc. As a result, the organization of Foreign Funds Control consisted both of geographic units and transactional units.

There was a complete coordination between the geographical groups and the type of transaction groups. Applications coming before the Control were first passed through specialists or experts on geographical areas; they were then sent to the groups who specialized on special types of transactions. The geographic man coordinated the action on the cases involving the same area. The transaction groups in their consideration of the cases coordinated their action on the same type of transactions unless there were special circumstances involved which warranted or made it desirable to treat one case of the same transaction type differently from another.

During this first year of Foreign Funds Control operations, an inter-departmental committee, consisting of top Treasury, State and Justice personnel, met almost daily to handle the more difficult problems involved in applications.

331372

The Department of State actually had a Division of Foreign Funds Control which maintained active liaison with the Treasury's Foreign Funds Control organization. It was particularly important during this tense pre-war period to avoid action in Foreign Funds Control which would embarrass our foreign relations.

2. Field operations.

The Control had to be in a position to function promptly in all parts of this country, although its activity was largely concentrated in New York. The 12 Federal Reserve Banks were immediately utilized as the field offices assisting in the enforcement of the freezing controls. Within each Federal Reserve Bank there was established a special department to treat with Foreign Funds Control problems. In New York, for example, where the major bulk of the work was largely concentrated, the administrative organization was patterned closely on the organization of the Washington office of Foreign Funds Control. Although in the other Federal Reserve Banks the administrative organization was not required to be thus formalized, there was at least one senior officer in each such bank who maintained active liaison with the officials of Foreign Funds Control, and who was responsible for supervising the operations of the freezing control within his jurisdiction.

Applications were directed to the Federal Reserve Bank in the district of the person or institution desiring to apply for the license to utilize some of his blocked assets. Through the twelve Federal Reserve Banks contact was made by the Treasury with the approximate 15,000 banks in the United States, any one of which at any time might have a client who desired to effect a transaction prohibited except under a Foreign Funds Control license. In this way, all blocked bank accounts within the United States were immediately affected as well as most security accounts and a majority of safe deposit boxes. Also, any customer of a

bank, whether or not a blocked national, could have immediate information from his own bank regarding his duties and liabilities with respect to blocked property. New regulations or changes in previous ones could immediately be communicated throughout the country.

3. Relations with Foreign Governments.

From the very inception of the freezing control there was active cooperation between Foreign Funds Control and the officials of the governments-in-exile, the funds of whose nationals were subject to the freezing control. In fact, during the initial stages of the operations of Foreign Funds Control, members of its staff were in daily contact with representatives of those governments and discussed with them practically every significant application relating to their nationals or their respective government's funds. Proposed Foreign Funds Control regulations were explored with representatives of these governments; information which would assist in the operation of Foreign Funds Control was freely furnished by these governments. Although this cooperation was effected on an informal basis, it characterized the operations of Foreign Funds Control throughout its operation in order to ensure that our controls were being utilized to attain the common United Nations objective.

B. ADMINISTRATIVE TECHNIQUES.

The initial period of Foreign Funds Control from an operational point of view was characterized by a development and perfection in the regulatory documents which constituted the basis for the freezing control. At the outset it can be said that the Treasury Department was equipped with somewhat clumsy legal tools to carry on its work. Refinement was made in terms of the Executive Order not only to meet the realities of the situation, but also to provide the most constructive guide to the public who were affected by its operations.

331374

The following is a discussion of the various types of documents developed by Foreign Funds Control during the first year of its operation. Although the forms of the documents were modified from time to time during the operations of Foreign Funds Control, and the usefulness of some even ceased during certain periods, they constituted the basic tools through which the Control operated throughout its history. No attempt will be made to discuss the subject matter of each document issued during this, or any other periods of the Control, but rather to identify the type of document and the circumstances under which a particular kind of document is used.

Two kinds of documents were used by Foreign Funds Control: public documents which were issued to the public at large, and confidential documents which are only for the staff of Foreign Funds Control and the Federal Reserve Banks.

The public documents essentially explain to the public what was prohibited under the freezing control and enunciated standards of conduct which should be followed by persons in respect to transactions which could only be effected pursuant to licenses. Certain types of transactions were authorized in the general licenses. Certain transactions were prohibited in the form of general rulings. Standards of conduct were enunciated in the form of general rulings and public interpretations.

The confidential documents recorded for the use of Foreign Funds Control and the Federal Reserve Banks what to do and how to do it in certain situations; they explained in many instances the reason for the policy or the program or procedure required and how and why it was evolved.

1. Public Documents.

Although Section 5(b) of the Trading with the enemy Act and the Executive Orders providing for the freezing control are not public documents issued by the

331375

Control, it was considered useful to include a discussion of these documents in the general discussion of "public documents", since they not only constitute the basic tools of the Control, but were the primary guides to the public with respect to the scope of the freezing control.

(a) Section 5(b) of the Trading with the enemy Act.

The so-called freezing control administered by Foreign Funds Control stemmed from powers granted by Congress to the President under Section 5(b) of the Trading with the enemy Act. At first passed in 1917, Section 5 was part of a lengthy act designed to institute necessary controls in a then existing war and to further the prosecution of the war. The Act established an Alien Property Custodian to vest enemy property. Section 5(b) as originally passed was not primarily conceived as a property control measure nor even as a measure to immobilize property, since these functions were delegated to the Custodian. Section 5(b) was to prevent, except under supervision, certain transactions which were not otherwise controlled. Those financial transactions which directly or indirectly might be of advantage to the enemy and would normally be accomplished through usual banking channels were to be prevented.

Between World War I and the inception of the freezing control Section 5(b) was twice invoked to meet domestic emergencies: the powers under this section were exercised to close the banks in 1933 and to call in the gold in support of the Government's gold policy.

In April, 1940, when pursuant to the powers under Section 5(b), the President issued the Executive Order freezing the property within the United States of Norway and Denmark and their nationals, the provisions of Section 5(b) were substantially the same as those in 1917. On May 7, 1940,

Section 5(b) was amended. United States was then at peace. There was a reluctance at that time to ask Congress for plenary powers, and the amendment took a very limited form, and related only to the control of securities. However, Section 5(b) of the Trading with the enemy Act, as amended on May 7, 1940, was the legal basis for all freezing orders issued thereafter up to December 18, 1941.

(b) Executive Order.

The original freezing order, blocking the funds in the United States of Denmark and Norway was in the form of an amendment to Executive Order No. 6560 of January 15, 1934. The freezing orders of April 10, 1940 and May 10, 1940 were similar except that the latter, because of the amendment of Section 5(b) of the Act, on May 7, 1940, specifically covered evidences of indebtedness and evidences of ownership of property. The order of May 10, 1940, Executive Order 8389, as amended, also permitted the control of payments to banking institutions as well as by banking institutions.

The purposes of the freezing order were never stated therein. In retrospect it seems that that was clearly an act of statesmanship on the part of those who were connected with the original issuance. The purposes of the Order changed from time to time, and any statement of the purposes on one date would have required periodic amendment of our objectives. Moreover, if our purposes were stated there would have been less disposition to meet each problem as it arose; each decision would have required consideration as to whether it fitted in with the original statement of purposes. In addition, difficulties would have been encountered in making subsequent and unanticipated changes in our licensing policy.

331377

Section 9F of the Order of May 10, 1940 represents a landmark in Government regulations. This provision, which prohibits "any transaction for the purpose of which has the effect of evading or avoiding the foregoing prohibition" was deliberately inserted to avoid evasion or avoidance of the provisions of the Order. It was found from experience that as soon as the Government spells out precisely the field of prohibition, every lawyer^{may} tries to find some way to circumvent the purpose. Most countries have had experience with foreign exchange markets and their regulations would close the loopholes. However, as soon as a country passed a new regulation someone invented a way of getting around it. It was with this lesson in mind that, having defined the obvious ways of engaging in transactions involving domestic finance, the proposition was laid down that any other type of transaction which was for the purpose of avoiding the designated prohibition was also prohibited.

Section 9F of the Order was criticized as totalitarian in approach. Actually, the provision was very successful. Although no one was ever prosecuted under this provision of the Order, it was at least explanatory — that when reference was made in Sections 9A to 9E of the Order to specific types of transactions, no technical interpretation of the terms was intended.

A further provision of the Order which deserves some discussion is Section 11B which provides that the term national of Norway or Denmark "shall include any person who has been or when there is reasonable cause to believe has been domiciled in, or a subject, citizen or resident of Norway or Denmark at any time since April 8, 1940." The phrase "reasonable cause to believe" is significant. It goes to the whole philosophy of the

definition and the theory of the Order. The theory of the Order is not that the Treasury was going out to hunt up a national. The theory of the Order was that anybody holding credits for another, or engaging in transactions for another was going to have to determine for himself whether or not the individual with whom he was dealing was a national. He had the duty to block the account and the duty of getting the license before he allowed the transaction to be consummated. The phrase was included to (a) protect persons in acting upon reasonable information, and (b) give the Control the widest possible coverage to allow any person who thought he should not have been designated as a national to appeal to Foreign Funds Control and prove that fact or at least rebut the presumption that he was a national.

The form of the Executive Orders issued after May 10, 1940 were very simple. All countries blocked between May 10, 1940 and June 1941 were blocked by a single order which simply stated that it amended Executive Order No. 8389, as amended, "so as to extend all the provisions thereof to or with respect to, property in which" the country or a national thereof, covered by the freezing order, had an interest.

(c) General Licenses

The area which the Control undertook to regulate was broad. Its basic policy immobilized, except under license, all property within the United States of all nationals of every country blocked under the Order. However, within this broad area were areas in which but little and, in some cases, no supervision was necessary. By a system of general licenses permitting certain categories of transactions in blocked property the Control

achieved flexibility, with a minor burden on American business, without impairing the Control's ultimate power. A license could be contracted or expanded by the addition or remission of conditions. Where it was deemed necessary the Control kept itself advised by means of required reports.

During the initial period of the Control the scope of the general licenses were limited with a view to relaxing the controls over as small a sphere as possible since the Control, untried in the field, was reluctant to extend the areas which should be free from control for a long time. It was only after the Control acquired more experience and more knowledge of the pitfalls that it was willing to let some areas go with less control in order to control the more important areas. This is an important aspect of the Control's history and is reflected in the fact that gradually more and more transactions were being freely allowed under general licenses. The pattern was one of recognizing that it was not important to control the every last item -- it was important to catch the larger things.

No attempt will be made here to discuss the scope of each of the general licenses issued by Foreign Funds Control during this period. The details in this connection have been adequately covered in a confidential document prepared by the Treasury Department (January 26, 1944) entitled "Discussion of Documents and Other Matters Pertaining to Foreign Funds Control." The following discussion will relate only to a summary description of those general licenses which reflect the basic programs of Foreign Funds Control, or where they represent how Foreign Funds Control improved its drafting techniques. The general licenses can be divided into three

major groups: (1) as to particular types of transactions, (2) as to persons; and (3) as to geographic areas.

During the early period of the Control the general licenses were exclusively transactional licenses. The subject matters of these licenses were covered initially by general authorizations issued to the Federal Reserve Banks to guide them in acting upon groups of applications falling into certain defined categories. For example, the predecessor of General License No. 1 was General Authorization No. 4. That authorization permitted the Federal Reserve Banks to grant license on individual application in cases which involved transfer of credit or payments to Norwegian or Danish accounts in banking institutions within the United States under instructions issued on or after April 8 (there had been previous instructions with regard to pre-zero transactions) provided such credits or payments were not made from Norwegian or Danish accounts in the United States. Obviously, it was not the purpose of the Control to stop funds from coming into blocked accounts.

General License No. 1, as originally issued, authorized all banking institutions to receive payments and transfers of credit for deposit to accounts held by them in which Norway or Denmark or a national thereof had a property interest, provided that the payments or transfers were not made from accounts in which Norway or Denmark, or a national thereof had a property interest. The type of drafting used in this document was subsequently changed. During this period the Control had not yet developed the concept of "blocked account", or the "generally licensed national". There was nothing but the terms and the language of the Order to serve as the vehicle for expression in the licenses. As a result, General License No. 1 was required to be amended as the funds of additional countries were

331381

blocked. In addition the phraseology was detailed and involved as compared with later issued documents.

The additional transactional general licenses issued in this period were concerned with permitting blocked nationals and their agents to manage or liquidate property and to meet necessary expenses and taxes. Some, however, covered distinct fields of considerable importance, such as the question of living expense remittances to blocked countries, and of handling estates.

General License No. 3, which licensed payment of checks drawn before the freezing date, i.e. pre-zero transactions, presented an interesting problem. Initially, this license, which was made applicable to the funds of each country as it was blocked, was revoked at the end of 30 days, which was considered an adequate period to cover checks in the "mill." It was a year before it occurred to Foreign Funds Control to make such licenses expire by their own terms in thirty days, thus avoiding the job of revoking them.

General Licenses Nos. 32 and 33, which permitted remittances to persons in territories occupied by the enemy, reflected the Control's general remittance program during the war. Shortly after the issuance of the first Executive Order in April 1940, the Division of Accounts of the State Department raised the question of whether the transmission of funds through the facilities of the State Department to Americans stranded in Norway and Denmark required a license under the Order. The Treasury Department, in a reply on April 17, 1940, advised the State Department that it was not necessary to obtain specific licenses for the transfers of reasonable

amounts for living expenses to stranded American citizens, since it was not desired to have the Order operating to hamper such transfers. At that time, this Government was trying to encourage American citizens to come out of this area and the Control did not want to put impediments in the way of their getting out. Consequently, the Control ruled that where the State Department would handle the transmission of funds to American citizens it would not interfere subject to the following precautions: that the State Department should look out for requests that were reasonably large and should also report to us periodically all persons receiving funds abroad. Initially, this ruling did not relate to foreigners abroad, but it was consequently extended to cases in which the spouse of an American citizen was an alien.

One of the most troublesome problems, politically, and from the point of view of pressure brought to bear, was the question of remittances to non-American citizens. Persons in this country had acquired the habit over the years of sending funds to their relatives in areas which subsequently became occupied even though such persons were not American citizens. In the early days of the Control, many applications for such remittances were received and for a long time none were acted upon, resulting in the creation of the first "ice box". All applications of this type were held up because it was felt if one application were granted thousands of others would have to be allowed.

Initially, there was considerable resistance in the Treasury to issuing a general license permitting remittances to this class of persons. Many argued that no remittances should be allowed to be made to Norway and

Denmark since that made dollar exchange available to the Axis. On the other hand a person at the same time could remit to Germany itself; an American citizen, after the blocking of Norway who had a sister in Norway could not remit to her; yet, if he wanted to send money to Hitler himself there was no law against it. The inconsistency of this position was soon recognized and General License No. 32 was issued in August 1940 permitting remittances to non-American citizens within the blocked area upon certain restrictive conditions.

The importance with which the whole remittance problem was viewed at this time was evidenced by the fact that Presidential approval was secured to the policy set forth in General License No. 32 prior to its issuance.

The original General License No. 32 contained some of the following conditions to permitting the remittances: very small amounts could be remitted; only individuals resident in the U. S. could make such remittances; the remittances could only be made to relatives or dependents of the sender; they could only be made by individuals who had resided continuously in the United States for one year; no remittances were permitted from blocked accounts.

General License No. 33, which was issued on September 10, 1940, provided for the remittances to American citizens residing abroad. Prior thereto the State Department had been handling all these remittances.

General Licenses Nos. 32 and 33 were subsequently amended on February 1, 1941 and the remittance area was further enlarged on the basis of experience during the earlier six months. For example, it was provided that the remitter need not be a resident of the United States and that the recipient of the remittance no longer had to be a relative or a dependent of the person here making the remittance and that the remittance amount of \$50 was too small. A major change was to permit remittances from blocked accounts to provide for the non-American

citizen abroad who had no relatives in the United States who could make gratuitous remittances to him. There were certain restrictions attached to remittances from blocked accounts, the most significant of which was that if such funds were used to make a remittance to persons abroad the dollars had to be credited to a blocked account. In other words, we were willing to allow blocked dollars to be used here to sustain a person in Denmark if the Danish banks were willing to take blocked dollars.

General License No. 28, issued on August 8, 1940, is the only license issued during this period which deals with a class of persons rather than a type of transaction. It provides that an American citizen returning from abroad whose accounts were previously blocked because he resided in a blocked country was accorded the same status as if he were not a national of a blocked country. This license constitutes the first of the generally licensed national concept which is reflected in the later issued document, General License No. 42.

The geographic general license was not issued until after the freezing control was extended to the rest of the world. At that time the so-called "neutral general licenses" were issued which will be discussed below.

(d) General Rulings

The general rulings define types of transactions prohibited or permitted under the freezing regulations. A few rulings were answers to inquiries and were wholly interpretative. Subsequently, the functions of such rulings were carried on by "Public Circulars" and "Public Interpretations." Some related to temporary situations or to matters important to only a few persons. Others, however, were the medium through which were instituted

331385

broad programs of the Control. In fact, during the initial period of the Control two of its most important programs were inaugurated through the device of the general ruling: the securities control program and the currency control program, which will be discussed in greater detail below.

General Ruling No. 4, which was amended May 24, 1941, deserves special comment since this Ruling represented a translation of the knowledge accumulated by Foreign Funds Control since its inception. This public ruling set forth the definitions of certain basic terms for which Foreign Funds Control could hold the public accountable hereafter. There were some 16 definitions included in this Ruling dealing with such terms as "the Order", "license", "blocked country", "generally licensed national", "blocked account" and "banking institution". In fact, some of the definitions anticipated the extension of the freezing control to the whole world, an act which took place in June and July of 1941.

These definitions were issued on May 24th instead of waiting until the Control was actually extended since it was desirous of getting the public acquainted with the terminology before the major steps of extending the Control was taken. In that way, it was hoped to avoid a dual confusion — (a) a confusion due to all the new terms, and (b) a confusion incident to a wide-spread extension of the freezing order.

In addition, this Ruling is significant for the following provision "The Secretary of the Treasury reserves the right to exclude from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to, particular persons, transactions or property or classes thereto. Such action shall be binding upon all persons receiving actual notice thereof or constructive notice if in any case notice

if filed pursuant to the provisions of the Federal Register Act." This provision was a milestone in the administrative thought of the Control. Before the document was issued the Control was of the view that it had to weigh and balance the class of persons who would be affected by a proposed general license. If the bulk of the people falling within the general license were good the general license was issued, although certain dangerous persons might thereby incidentally obtain the same advantages. Initially, it was the view that dangerous persons could not be excluded from the license except to the extent that the technical language of the document might carve out certain categories of them. The above provision attempted to meet this problem directly. It followed the theory that in according a privilege to a category or class of persons the Control could feel free to accord that privilege to a class and on an ad hoc basis deprive other persons of these privileges without carving them out expressly in the document. Actually, this constituted the first step in the evolution of ad hoc blocking which will be discussed in greater detail in the following section of this history.

(e) Regulation

The Treasury issued "Regulations under Executive Order No. 8388, as amended." The regulations covered the formal aspects of the Control as distinguished from the substantive aspects of the Control. In other words, they do not tell one anything about how policies of the Control are really decided or what the policies of the Control are. The device of rulings and general licenses were used for this purpose. Regulations required approval by the President. With the rapidity with which policy was changing and new areas were developing, it was much more convenient to administer in terms of general rulings and licenses which could be issued without annoying the President.

331387

Three significant items were covered by the regulations. One was the definition of the words "property," "property interest", and property interests which indicated the extreme breadth of the Control over the property of blocked nationals. The second was the provision that the "custody" of a safe deposit box included not only the persons having access thereto, but the lessors whether or not the latter had access to the box. The third was the requirement for a report of the amount and kind of foreign-owned property in the United States by the persons or institutions having the custody, control or possession thereof. The latter regulation was significantly modified in June 1941 when the TFR-300 property report form was promulgated.

(f) Public Interpretation

Foreign Funds Control also issued Public Interpretations. Often they were not merely interpretations but explanations. They amended general licenses; they curtailed the scope of certain general licenses; they enunciated policies that prohibited certain transactions; and some also established standards of conduct.

The explanatory type of Public Interpretation is represented by Public Interpretation No. 5, which explained that imports or exports which were insured by enemy national insurance companies required a waiver under General Ruling No. 11. This interpretation was also precautionary to prevent insurance being placed by traders abroad with enemy nationals. An example of a Public Interpretation which was used to amend the scope of a general license is Public Interpretation No. 3, which materially curtailed or restricted the freedom of operations under the four neutral general licenses which are described in greater detail below. Public Interpretation No. 6, for example,

was definitely prohibitory. It provided that checks, currency, or drafts could not be sent out of the United States to the European neutrals.

(g) Public Circulars

The public circular, which would normally be expected to be an explanatory document followed a diverse pattern. Some were prohibitive, some amended general licenses, some were explanatory, others established standards of conduct, while still others enunciated policies or were interpretive.

Public Circular No. 12, for example, represents the prohibitive type of circular. It provided that a certain type of draft could not be cleared except pursuant to a license. Public Circulars Nos. 4, 4A, Band C were explanatory of TFR-300 reports. Public Circular No. 18 established the standard of conduct for American firms, which operated outside the continental United States, with respect to their relations with blocked nationals and enemy nationals. An example of the interpretive type of circular is Public Circular No. 3. During 1941 several inquiries were made as to whether General License No. 58, which authorized trade between the United States and China, provided no other blocked interest other than Chinese, was involved, authorized trade transactions if the goods were carried on a Japanese vessel. In Public Circular No. 3 the Control interpreted General License No. 58 to mean that the mere fact that the shipment was carried on a Japanese boat did not prevent the transaction from otherwise qualifying under General License No. 58.

(h) Press Release

Another type of public document which supported and implemented the programs and policies of the freezing control was the press release. This document served a more important purpose than one would ordinarily expect.

331389

They actually were explanatory and interpretative announcements to the public of the Control's programs and policies as incorporated in general licenses, general rulings, etc. A press release often went much further than the public document and indicated what the policy of the Treasury was, why the policy was involved and what action was likely to be taken in connection with such problems of applications in respect to such transactions were presented to the Control for license. For example, Public Circular No. 18 was the public document issued by Foreign Funds Control which established a standard of conduct for American firms in Latin America to maintain in their dealings with enemy nationals. The press release issued at the same time went much further than the Public Circular. It explained the underlying considerations for the issuance of the circular; it explained its objectives; it indicated clearly what action was likely to be taken on cases which might be raised with the Control because of the public document.

Second outstanding example of the enunciation of policy through the medium of the press release is Press Release No. 43 which was issued at the time General Ruling No. 15 was issued. That Ruling prohibited attachments of Mexican Railroad rolling stock in this country by certain creditors of Mexican railroads. The objective was to speed up the movement of vital goods between Mexico and the United States. Up until the time of the issuance of that Ruling, goods were carried to the border on Mexican cars and there unloaded and put on American cars and carried across the border into our country because the Mexican railroads were in default and it was felt that if the Mexican railroad cars came over the Mexican border creditors would attach them and immobilize them. At a time when rolling stock became short

331390

and vital during the war it was desirable to prevent such attachments and to encourage the direct, uninterrupted shipment without this unloading and reloading at the border of goods from Mexico to the United States. The railroad prohibited the attachment of Mexican rolling stock without a waiver of that ruling. The press release, however, explained in detail the considerations which motivated the issuance of the Ruling; explained the policy the Treasury was trying to follow and indicated very clearly that any license for attachment to such rolling stock would be permitted. As a result the movement of goods between Mexico and the United States was speeded up and the effectiveness of the press release in connection with the document was illustrated by the fact that no applications were filed with Foreign Funds Control to attach any Mexican Railroad rolling stock.

2. Confidential Documents.

(a) Authorizations

To guide the Federal Reserve Banks in their daily operations with respect to applications so that a minimum number of applications would be referred to Washington for action, the technique of the confidential document was used known as the authorization. There were two kinds of authorizations: General and Special.

The General Authorization was a guide sent to all Federal Reserve Banks endeavoring to advise them on how to act on a certain category of cases or types of transactions which could not be effected under the public documents. General Authorization No. 44, for example, which was an elaborate document, endeavored to advise the Federal Reserve Banks what remittances and under what conditions such remittances could be made if they did not fall within the standards set forth in the publicly enunciated General Licenses Nos. 32 and 33.

Special Authorizations are essentially similar to the General Authorizations in objective, although their circulation was confined to the Federal Reserve Banks in the United States or in many cases to specific Federal Reserve Banks. For example, Dallas and San Francisco both had Special Authorizations to take action on certain types of currency imports when the currency had been imported from Mexico. It was not necessary to give an authorization of this kind to all the Federal Reserve Banks since the problem was peculiarly one for Dallas and San Francisco, districts adjacent to Mexico which were likely to receive the applications relating to currency coming from Mexico.

Another type of Special Authorization was the type which authorized certain Federal Reserve Banks -- New York, Boston, Chicago and San Francisco, to take action on any type of case submitted to them provided the Federal Reserve Bank in those districts was fully satisfied that the transaction was not contrary to the objectives of the Executive Order and that the action which they proposed to take was consistent with the policies of the Washington office and was the action that the Washington office would have taken on that type of case.

With the New York Federal Reserve Bank, with which the Washington office was in frequent daily communication by telephone, it was possible to go even further and to authorize that bank to take action even on those cases which we have, by circular or by caveat in another document, ordinarily required be sent to Washington for action so long as the Federal Reserve Bank in New York was satisfied that what they were doing was consistent with what we would have done and with the objectives of the Executive Order.

(b) Action Guides

Action Guides were another type of confidential document which to a large extent enabled the Federal Reserve Banks to take action on applications rather than to refer them to Washington. There were two types of action guides; the caveat type which instructed the Federal Reserve Banks to refer certain types of transactions to Washington for action. Usually they were types of transactions on which either the policy or the standards or action were not clearly established or in respect to which the establishment of factual information could not be easily accomplished by the Federal Reserve Bank. For example, in considering a transaction involving strategic materials it was not easy for the Federal Reserve Bank to consult with the War Production Board or the Petroleum Coordinator or whatever agency here was vitally concerned as an expert on that problem. It was much more efficient to have that case referred to Washington and to allow the people in the Licensing Division who specialized in that type of consultation to handle the problem.

The second type of action guide had the effect of granting authority to the Federal Reserve Banks to take action of a certain nature on cases of a certain kind. If the cases fell within the description in the Action Guide, the Federal Reserve Banks were authorized to take certain action provided the transaction met prescribed tests or standards defined in the Action Guide.

(c) Circulars -- Confidential and Special

Confidential and Special Circulars were of a more diverse nature. Some gave authority to the Federal Reserve Banks to take action on certain problems; some were caveats advising the Federal Reserve Banks not to take

action on certain applications but to refer the case to Washington. Others imposed reporting requirements on the Federal Reserve Banks. Still others were purely explanatory in nature. In effect, these circulars constituted a form of communications to the Federal Reserve Bank recording instructions, regulations, or information given to the Federal Reserve Banks which would assist not only the banks, but the Washington staff.

(d) Inter-Office Licensing Memoranda

Later on in the history of the Control a new document was evolved known as the "Inter-Office Licensing Memorandum". In these memoranda were recorded the types of cases which were generally required to be sent to the Washington staff for action; the standards and tests which were imposed on the Washington staff in considering such cases; and an indication of the decision which would have been arrived at provided those tests and standards were met. These so-called inter-office licensing memoranda enabled, for example, the New York Federal Reserve Bank to take action on a much larger number of cases than they would otherwise have been authorized to handle.

C. SIGNIFICANT PROGRAMS

1. Securities Control

When the first Executive Order establishing the freezing control was issued on April 10, 1940, it was realized that if the Control was to be effective in preventing the assets of invaded countries from falling into the hands of the invaders and being liquidated by them, a method must be found to prevent the enemy from disposing of looted securities. Although the Order as issued contained no specific reference to securities, it was the object of this government in issuing the Order to include the control of securities within its scope.

Some questions arose, however, at the outset, as to whether the Trading with the enemy Act of this First World War, upon which the Order was based, gave authority for the extension of the Control to securities. The Treasury Department immediately clarified its position in this question by issuing General Ruling No. 2 (April 19, 1940) and stating that the Control did extend to securities. However, subsequently in May, 1940, as described above, the Trading with the enemy Act was amended to cover control of securities and the evidences of indebtedness. In the meantime, however, the general ruling provided the temporary stop-gap which prevented tremendous quantities of securities from escaping our control.

The invasion of Holland, Belgium and Luxembourg in May, 1940, gave tremendous importance to the matter of securities control. The people of these countries, particularly the Dutch, for many years had been actively interested in American securities and had large investments in them. The people and governments of these countries realized that unless a way could be found to prevent the liquidation of securities seized by the invaders, tremendous losses would accrue to their legitimate owners, and a tremendous asset would be given to the war effort of the Axis on the economic front.

On May 13th, Foreign Funds Control recommended to the Hague the destruction of securities. It was regarded as not feasible. The authentication and transmission of a certificate of destruction was not an assurance to the owners that the securities would be replaced. Moreover, on the same day the Dutch Minister had informed the State Department that he had been on the telephone with the Hague and that the military situation had deteriorated to the point where they regarded it as too late to take any measures on financial matters. Another reason why that plan could not have worked out was that the owners were naturally

331395

reluctant to destroy their securities, preferring to believe that somehow the occupying forces would leave them alone. Finally, we had so few Consuls in the Netherlands that it would have been physically impossible for them to do the job. It was at that desperate moment that the cable went over, "Dip them in red wine."

To meet one phase of this situation, General Ruling No. 3 was issued on June 3, 1940 providing that the freezing control prohibited the acquisition, transfer, disposition, transportation, importation, exportation, withdrawal or any other dealing in or with respect to any security registered in the name of a national of any of the countries which had been blocked under the freezing control. Under this ruling it became impossible for a registrar or transfer agent in this country to change the name in which a security was registered (if such name were that of a blocked national) even though it appeared from documentary evidence that the transfer had been made long before the date of the invasion. It was recognized by Foreign Funds Control that the invaders were adroit enough in the use of compulsion and fraud to obtain apparently legitimate evidence for untrue statements of fact.

Although General Ruling No. 3 solved the problem of dealing with registered securities it did not solve the problem of bearer securities, many of which were held in invaded areas. To meet this latter problem, an over-all system for examining securities brought into the United States was required. It was recognized that it would be insufficient only to prohibit the importation of securities from the blocked areas, since securities could enter the United States through the channel of neutral nations which did not have restrictions against the importation of securities.

To meet this situation Foreign Funds Control issued General Ruling No. 5 on June 6, 1940 which in effect provided that all securities entering the United

States from whatever place or origin must be deposited in a Federal Reserve Bank from which they could be released only upon proof, judged to be sufficient by the Treasury Department, that no blocked country or national thereof had any interest in such securities since the date of the freezing order. In the enforcement of this ruling the Control acted in close cooperation with other agencies of the Government and particularly the United States Customs and Post Office officials, the former of whom examined the effects of incoming passengers and the latter of whom saw that securities contained in incoming mail were deposited with a Federal Reserve Bank.

Although it is not clear where the idea for General Ruling No. 5 originated, the files indicate that about May 18th the British Embassy advised that it had been suggested by the Governor of the Netherlands Bank just before the Dutch surrendered that the United States should take steps to prohibit the importation of bearer securities. The British endorsed this proposal, with the suggestion that importation under license be allowed as to bearer securities certified by the British and French Governments so that there would not be any delays or difficulties in disposing of their securities. It will be recalled that there was no Lend-Lease program at that time and the British and French were financing the war, in part, by the liquidation of securities in the United States market. On May 20 the British Ambassador wrote to the President, indicating ways in which the United States Government might be of assistance to the Allied Government, and suggested that arrangements be made to prevent the sale of bearer securities shipped from Europe except under license so as to safeguard the market against sale for German accounts of securities obtained in occupied territories.

It was not an easy matter to issue General Ruling No. 5 under the circumstances existing at that time. The views of the United States on foreign

331397

relations were not crystallized. Moreover, many of the government agencies were worried about tampering with the mails. In fact, the Post Office Department wrote the Control a strong letter opposing the plan, stating that it was contrary to their traditions. However, there was enough opinion on the side of taking this action coupled with the urging of the British, the Dutch and the other countries, that finally on June 6, General Ruling No. 5 was cleared by the President.

The ruling was raised with the President for several reasons. This was the first case of a ruling that extended beyond the scope of the Order. It could not be called an interpretation of the Order, or a license under the Order. It was an outright prohibition. Thus, by securing the approval of the President it could be said, if necessary, that it was issued under the authority of the President. It would/^{not} have made any difference if it were called an executive order or not. Actually, it constituted an order under the statute. The statute did not specify that the President had to act under an executive order. ~~Actually,~~ ^{probably} it would have been better to have issued the provision of General Ruling No. 5 in the form of an executive order but the Treasury was troubled about the reaction to that kind of a document.

Securities imported into the United States and which were not allowed to be released by Foreign Funds Control remained in the custody of the Federal Reserve Bank. However, to prevent undue hardship, General Ruling No. 6 was promulgated, which allowed such securities to be transferred from the Federal Reserve Bank in which they were originally deposited, to a domestic bank within the United States into specially blocked accounts known as "General Ruling No. 6 Account". Dividends and interest could be collected and placed in the account and

and the securities could even be sold if the proceeds went into the account.

To complete this brief description of the securities control program, it might be well to refer briefly here to the use of Treasury Form TFEL-2 which facilitated operations under this program. In part, the problem of dealing with securities physically located abroad was simplified by an European practice of requiring the placing of a tax stamp on securities held in such countries. The stamp in itself showed that the securities came from or had been held in a foreign country. The Executive Order (Section 2A) expressly prohibited any transactions in such securities except under license. When the title of stamped securities had been satisfactorily established, the Control attached to them an official certificate called Form TFEL-2, which signified that the securities could be traded freely.

Another part of the program related to securities issued in the United States by blocked countries of Europe. From time to time payments of coupons on such securities became due and, if matured, the face amount of the securities became payable. Certain of the countries occupied by the enemy which had such dollar issues outstanding had funds within the United States which the issuing country desired to use in maintaining the fiscal service on these securities. Foreign Funds Control, in general, was willing to authorize the use of these funds for the payment or redemption of such securities. However, the question immediately arose as to which securities might legitimately be paid and which could not be paid except, of course, into blocked accounts. Here again, by the use of Form TFEL-2, the Control facilitated the operation of normal payment.

The TFEL-2 form, which was prepared by the Bureau of Engraving on about three days notice, contained all the standard precautions against counterfeiting -- the vignette -- the colored paper which discloses any erasure. The form had the

331399

date, the issue of the security, the issue, the certificate number and the denomination so that it described the security to which it was being attached, making it impossible for a man having a security that was not worth much to transfer that form to a valuable security of questionable origin. The application form for getting the TFEL-2 certificate attached to the security was similar to the one used on the importation of securities — it was an inquisition. ?

Originally, all dealings in stamped securities required the attachment of Form TFEL-2. Gradually, it was found from experience and further knowledge of the security practices that there were circumstances when such form need not be required as a condition precedent to dealing in the securities. If the security had been held by a banking institution since prior to July 25, 1940, (the date of the imposition of the stamped securities control), the holder could collect the coupons without fulfilling the requirement that Form TFEL-2 be attached to the security. This was recognized and adjusted to the realities of the situation — that banks and insurance companies had been holding foreign stamped securities for many years — some of them having been repatriated during the last war — and that therefore it was practically impossible for us to declare the attachment of Form TFEL-2 to securities as necessary when all these institutions wanted to do was to collect on the coupons.

Although the Philippines had the same status as the United States under Executive Order 8389 during the period between April 1940 and July 26, 1941 an important exception was made to this general principle in the treatment accorded the Philippines by the Treasury under General Ruling No. 5. Under this ruling the Philippines were treated as a foreign country.

The Treasury directed that Customs and Post Office officials in the United States should hold securities coming from the Philippines as if such securities had come from a foreign country. This procedure was necessary for the successful enforcement of the prohibition on security imports. In the Philippines the Customs control was under the local Philippine Government and was not deemed to be adequate. Anyone might land there from a small boat bringing looted securities with him and then proceed to ship them to the United States. This would have constituted a vehicle for obstructing General Ruling No. 5.

On July 2, 1940, attorneys for the New York Agency of the Philippine National Bank advised the Treasury that certain securities forwarded for collection to this agency by its head office had been seized by the Post Office authorities. The attorneys strongly argued that it was illegal under the Executive Order and the rules issued thereunder to treat securities coming from the Philippines as though they were coming from a foreign country, relying on the fact that (1) no transfer of credit in which a national had an interest was involved, and (2) under the definitions in the Executive Order the Philippines are part of the United States.

Treasury cabled the High Commissioner of the Philippines inquiring whether he could give the Treasury any assurances that he could effectively control the importation of securities into the Philippines. The High Commissioner of the Philippines replied that the Treasury could be given no such assurances and urged the Treasury to retain its control on the importation of securities into the United States from the Philippines.

Treasury accordingly continued to apply the principles of General Ruling No. 5 to the Philippines. It was the Treasury's position that the importation and control of securities from the Philippines was a reasonable enforcement

measure to carry out the purposes of General Ruling No. 5. The status of the Philippines was analogous to the state of the Union which might have been invaded. In such a case the Treasury would have blocked off such a state from an enforcement point of view and would have treated that state like a foreign country. Subsequently on September 18, 1940, General Ruling No. 7 was issued which proved that the provisions of General Ruling No. 5 and General Ruling No. 6 had been extended to securities coming from the Philippines.

It was not until October 20, 1941, after Treasury representatives had arrived in the Philippines that General Ruling No. 6 accounts were established. At that time the Treasury representatives reorganized the method of handling the importation of securities in the Philippines and established a register in which the securities received into General Ruling No. 6 accounts were registered. A filing system was set up in the Office of the High Commissioner whereby securities were placed in envelopes so that they might readily be located.

2. Enforcement Techniques.

From April 1940 to June 1941, the enforcement work was of a very restricted character. Licensing itself was an enforcement technique since through the proper use of licensing transactions were allowed which were considered desirable; licenses were refused where the transaction was considered improper.

During the first months every license required a report. This requirement was ordinarily written into the terms of the license. After some experience with that requirement it was decided that it could be eliminated. Many of the transactions which were then being licensed were exceedingly simple and it was deemed unnecessary to require someone to file a report that he had paid a check of \$500.

(a) Census of Foreign Owned Assets in the United States - TFR-100.

The major enforcement activity during this period was the procurement of property reports on TFR-100 form. Each time a country was frozen

a Regulation was issued requiring that all persons holding assets in which nationals of such country had an interest file a report on TFR-100 giving information with respect to the amount and general character of those assets.

TFR-100 was a simple form of one page on which the person merely stated that he was holding so many assets for such and such a person and whether such assets were in cash, securities or other property. The person who filed a report was thus on record of having assets of a foreign national and the temptation of violating the freezing order was minimized since such person had no knowledge of how the information was being used by the freezing control. The information was tabulated and indexed.

One draw back to the effective utilization of the TFR-100 reports was the fact that we did not require a report on a separate form for each person. Thus, for example, Chase National Bank filed a brochure itemizing the information for each person for whom they held accounts. Such reports could not be filed alphabetically without tearing each report apart and filing each part separately. This was a distinct difficulty in the form requirements so that actually the primary importance of these reports from an enforcement point of view was the fact that it required a person to make up his mind immediately whether he was going to comply with the Order and put himself on record as holding funds for a foreign national. It served as a stimulant for him to comply.

(b) Information on Blocked Business Enterprises - TBEE-1.

Probably the next important step in the enforcement program was taken somewhere in the autumn of 1940 or early in the spring of 1941, through the issuance of Form TBEE-1. Prior to the issuance of this form the business enterprises which were frozen merely filed applications for business operating licenses, furnishing whatever information they saw fit. No one had ever made

331403

clear what things were significant or what information was desired in connection with the licensing of business enterprises. Gradually, as the Control was extended to more and more countries and the strong probability appeared that the Control would be extended throughout the world to cover the funds of practically all countries of the world, it was felt desirable that some basic information should be obtained with respect to business enterprises which were going to operate under the freezing control regulations. For several months a questionnaire to serve this purpose was worked on. When the form was finally issued, known as TFEE-1, it called for certain basic information with respect to which each business enterprise operating under the freezing control; facts relating to ownership, nature of business, directors, officers, companies with which affiliated, etc. This information supplied us with the first data on foreign controlled or owned business enterprises operating in the United States and furnished one of the bases upon which the enforcement work of the freezing control could rely as the first step in investigation and enforcement.

(c) Use of British Censorship Intercepts.

A further aid in securing enforcement in the freezing control was derived from the censorship intercepts furnished by the British. In the summer of 1940, we were not in the war and there was no American censorship. However, the British secretly and confidentially began during the summer of 1940 to furnish us with the censorship intercepts they made. Initially, this information was read only by the top staff since it was considered inadvisable to let word of the existence of this information in American files get to the American or British public. Eventually, however, it became

necessary to establish a procedure for the effective utilization of this material. In November 1940, two members of the staff commenced to index these intercepts. However, it was not until May 1941 that Foreign Funds Control began to search all names in the applications against this file.

CHAPTER IV

PERIOD OF DEFENSIVE BLOCKING - JUNE, 1941 - DECEMBER 7, 1941

A. Defensive Measures

1. Extended Blocking
 - (a) Geographic General Licenses
 - (i) Neutral general license
 - (ii) Russian general license
 - (iii) China general license
 - (b) Status of Philippines and Hawaii
 - (i) Philippines
 - (ii) Hawaii
2. Census of Foreign Owned Property
3. Proclaimed List of Enemy Nationals
4. Development of Enforcement Technique
 - (a) Commencement of Ad Hoc Blocking
 - (b) Establishment of Investigative Staff
5. Creation of Economic Defense Board

B. Contributions to Defense

1. Keeping Oil from the Japanese
2. Activity in Directing Strategic Materials into Defense uses.
3. How G&F was forestalled in having its German ownership further camouflaged.
4. Supplementing the F.B.I. in its control of sabotage, espionage, and propaganda.
5. Modifications in Securities Control Program.

C. Administrative Organization

1. Relations of Foreign Funds Control to other Departments of the Treasury and to other Departments of the Government.
2. Public Education of Freezing Control.

331406