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CHAPTER V

PERIOD OF AGGRESSIVE BLOCKING -- DECEMBER, 1941 to AUGUST, 1945

Commencing with December 7, 1941, the policies and efforts of the Control changed to that of waging aggressive economic warfare. The object during this period was deliberately and directly to hurt the Axis wherever possible by preventing the acquisition of raw materials, use of credits, and any advantages in foreign investments. Briefly, the operations of Foreign Funds Control during this period were directed towards:

1. the complete severance of all financial and commercial intercourse, trade and communication, direct or indirect, between the United States and the Axis and Axis-dominated countries;
2. the prevention of all financial and commercial intercourse and trade between the United States and any country outside the Western Hemisphere which directly or indirectly benefitted the Axis;
3. the prevention of all financial, commercial and trade transactions between the United States and any other American Republic which directly or indirectly benefit the Axis, including all transactions which benefitted real or juridical persons within the American Republics whose influence or activity was deemed inimical to the security of the Western Hemisphere;
4. The elimination of all financial and commercial activities engaged in by real or juridical persons within the United States whose influence or activity was deemed inimical to the security of the Western Hemisphere.

The basic tools for waging aggressive economic warfare were inherent in Foreign Funds Control. Although until this time it had been used for protection first, and defense second, it could and was easily transmuted into a mechanism for aggression simultaneously with the outbreak of war. A striking example in this connection is represented by the Japanese oil situation. Before we embark on a description of the external manifestations of these changes it might be useful to indicate some of the basic legal tools put into operation after Pearl Harbor, which in turn were reflected in the war objectives of Foreign Funds Control.

A. Basic Legal Tools

1. Amendment to Trading with the enemy Act.

On December 18, 1941, the First War Powers Act was passed. Title III of this Act amended Section 5(b) of the Trading with the enemy Act and provided authority to deal effectively with all ramifications of foreign property and foreign property ownership in the war emergency. The Departments of Treasury and Justice worked very closely in the preparation of Title III. Considerable attention was given to the areas in which the powers previously granted by the Trading with the enemy Act were, or might be, inadequate for the grimmer phases of economic warfare. Thus, Title III appears in the nature of a list or catalogue of powers for waging war on the financial front, and is a close-packed broad delegation of powers. It was amended only once in Congress and the debate on the floor indicated no desire or effort to limit the powers but merely so to frame the Act, should any vesting of property occur, that careful reports would have to be made concerning such property.

In passing the First War Powers Act, Congress ratified everything which the President or the Secretary of the Treasury had done in respect to foreign property under the Trading with the enemy Act, as amended.

From the time of the enactment of the First War Powers Act to February 12, 1942, no formal delegation of the additional powers granted by Title III was conferred on any agency. On February 12, 1942, the President formally delegated all of his authority under Sections 3(a) and 5(b) of the Trading with the enemy Act to the Secretary of the Treasury who thereupon became sole repository of the President's authority until the Office of the Alien Property Custodian was established on March 11, 1942. This was effected through the issuance of a memorandum to the Secretary of the Treasury and signed by the President. Previously, the Secretary of the Treasury had received such powers on an ad hoc basis. For example, we used those powers in clearing the docks on the West Coast of derelict property.

The immediate cause of the formal delegation of the powers to the Secretary of the Treasury was due to the fact that Treasury was getting ready to vest General Aniline & Film Corporation. The memorandum was signed by both the Secretary of the Treasury and Mr. Leo Crowley, who was then being considered for the position of Alien Property Custodian. Not long after Treasury had vested General Aniline, the formal memorandum was made public and filed with the Federal Register.

2. Executive Order No. 8998

By December 26, 1941, Hongkong had fallen and it was quite obvious that Hongkong would not be the last allied area to fall under Japanese control. In order to avoid the necessity of having to go to the President and get a new Executive Order every time another area was occupied by the Japanese, Executive Order No. 8998 was issued, setting up a procedure for the automatic extension of the freezing control to any area which the enemy might occupy after December 26, 1941.

Inasmuch as the fall of the Philippines was imminent and to enable this Executive Order to provide for automatic freezing of the Philippines as they were occupied Executive Order No. 8998 was so worded that (1) the Philippines were not included in the definition of the United States, and (2) sub-paragraph 3 of Paragraph 3 of this Executive Order provided that the definition of "foreign country" included "any territory which on or since the effective date of this Order is controlled or occupied by the military, naval or police forces or other authority of such foreign country".

Manila fell on January 1, 1942. Under the technical terms of Executive Order 8998 the Philippines were blocked as Japanese territory. Administratively, however, it was not desired to deal with the Filipinos as Japanese nationals. Accordingly, on January 5, 1942, Public Circular No. 11 was issued which had the effect of adding the Philippines as a new country to the list of blocked countries and provided further that the "effective date of the Order as applied to the Philippine Islands shall be deemed to be January 1, 1942."

3. Executive Order 9193 - Establishment of a Custodian of Alien Property.

Actually, at the outbreak of war on December 7, 1941, it was indicated that a separate agency might be created by the President to exercise managerial functions with respect to enemy property. In anticipation of the crystallization of such an agency the Treasury refrained from ^{the} crystallization of policy in this field and in other fields of administration which are properly exercised by an Alien Property Custodian.

On March 11, 1942, Executive Order 9095 was issued establishing the Office of Alien Property Custodian. It was amended on July 6, 1942 by Executive Order 9193.

Executive Order 9193 divided the authority between the Treasury and the Alien Property Custodian as follows: The Custodian was given the responsibility of (1) vesting or supervising all business enterprises owned^{by} or on behalf of persons living in the six countries which had declared war against the United States; (2) any property within the United States owned or controlled by an enemy country or national thereof and foreign-owned patents, trademarks, copyrights and (3) dealing with enemy interests in litigation. The Treasury retained control of dollar balances, securities and other liquid assets of enemy countries pending clarification of this government's policy with regard to the ultimate treatment of assets of enemy countries.

Subsequently, on June 8, 1945, the Executive Order was further amended giving the Custodian power to vest all German and Japanese dollar balances, securities and other liquid assets. This was effected in line with the policy agreed upon between State and Treasury Departments and the Alien Property Custodian to eliminate completely all existing German and Japanese interests in the United States.

4. Section 3(a) of the Trading with the enemy Act.

By the declaration of war Section 3(a) of the Trading with the enemy Act was invoked prohibiting trade and communication with the enemy. "Trade" was defined in a very comprehensive manner to cover almost every kind of intercourse with the enemy. Similarly, "enemy" was comprehensively defined. The terms and whole approach of Section 3(a) stemmed from the last world war. While certain aspects of it were helpful in this war, there were certain other aspects that were prejudicial. "Enemy" was in many respects too narrowly defined in that, for example, any corporation incorporated in the United States was not an enemy under the 1917 provisions of the Trading with the enemy Act although it might have

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been completely enemy-owned and controlled and doing business in, for example, Argentina. Secondly, it was too broad in that it included a large number of companies in Latin America by definition, because they had either an agency or office in Germany. Moreover, there were the Dutch companies which had transferred their legal situs from the Netherlands to the Netherlands East and West Indies, and they were technically enemies under the definition of the Trading with the enemy Act.

To avoid these problems, it was recognized that there was a licensing authority under Section 3(a) of the Act reposed in the President. On December 11, 1941 the President issued a general license under Section 3(a) of the Trading with the enemy Act, licensing any transaction or act prohibited by Section 3(a) of the Trading with the enemy Act, as amended, provided, however, that such transaction or act was authorized by the Secretary of the Treasury by means of regulations, rulings, instructions or licenses or otherwise pursuant to Executive Order 8389, as amended. Since the provisions of Section 3(a) overlapped the provisions of Section 5(b) and the freezing control, and to avoid interference by having a dual licensing system, the general license thus issued by the President under 3(a) in effect provided that if a transaction were licensed under Section 5(b) it would also constitute a license under Section 3(a).

B. BASIC REGULATIONS

It is not intended here to describe each of the documents issued by the Control during the war. Only those will be discussed which reflect the ⁱⁿportant basic policies of the Control adopted during this period. In this connection it should be kept in mind that such items as the security and currency control programs, and other programs developed in the earlier periods of the Control's history were not only retained, but further strengthened during this period.

1. General Licenses

(a) Treatment of foreign nationals (other than Japanese) in the United States - General License 42.

It will be recalled that under the broad definition of "national" contained in the freezing control order any individual within the United States was subject to the provision of such order if (a) such individual had been domiciled in or has been a subject, citizen or resident of a blocked country at any time on or since the effective date of the Order; or (b) such individual was acting for the benefit of or on behalf of any blocked country or national thereof. Under this broad definition of the term "national" all citizens of Germany, Italy and Japan and all citizens of any other blocked country were subject to the blocking provisions of the freezing Order. Furthermore, all refugees who had come to the United States since the effective date of the Order and who were resident in any of the blocked countries at any time since the effective date of the Order were included in the freezing control Order in order to give the Secretary of the Treasury the broadest possible power to deal with any situation which required action in the public interest.

It was never intended, in administering the freezing control Order, that the financial and commercial activities of all individuals within the United States who were nationals as defined in the Order would be subjected to the control under the Order. Even before our entry into the war, through the use of the technique of the general license, the Secretary of the Treasury had been able to effectively to exclude large groups of individuals from the blocking provisions of the Order. In this connection, General

License No. 42 was issued. After our entry into the war General License No. 42 was amended, which provided that any person who resided in the United States on February 23, 1942 and who did not thereafter enter into any blocked country was effectively lifted from the provisions of the freezing control Order with certain exceptions. Included among the individuals who were not granted the privileges of this general license were persons acting for the benefit of or on behalf of any blocked country or any blocked national.

Under this general license the Secretary of the Treasury had the power to exclude on an ad hoc basis any person whom, he found, did not deserve the privileges of this general license. Thus, the Treasury was in a position to categorize persons of blocked countries into two groups (a) those suspected of carrying on activities inimical to the public interest, and, (b) those whose activities were clearly above suspicion. It has been the experience of this government that it was preferable to concentrate on those individuals against whom there was some evidence of inimical activities, rather than to attempt control of a large group of individuals where there was no evidence against most of the individuals in the group. For example, it was clearly undesirable to attempt to control financial and commercial activities of all German, Italian and Japanese nationals resident within the United States. Administrative difficulties involved in attempting to control such a large portion of the population would be so great that it would not be possible to give sufficient attention to concentrating on or controlling the activities of the individuals against whom there is evidence indicating that their activity should be carefully scrutinized.

It should also be emphasized that the test as to whether or not the financial and commercial activity of any particular individual is to be controlled should not be determined by the citizenship of such individual. Individuals who were found to be acting for or on behalf of blocked countries or blocked nationals were excluded from the privileges of General License No. 42 and subjected to the blocking provisions of the Order, irrespective of citizenship of such individuals.

(b) Treatment of Japanese - General License 68A.

Immediately after Pearl Harbor Public Circular No. 8 was issued which revoked all general and specific licenses insofar as they authorized directly or indirectly any transactions by, on behalf of, or for the benefit of Japan or any national thereof. At this time, Foreign Funds Control had the only mechanics available for striking directly at the Japanese in the United States. It closed all Japanese institutions on the West Coast, installed Treasury Department representatives to supervise them, and commenced immediate investigations of such institutions.

Gradually, however, as the Control was able to size up the situation more carefully, it passed additional rulings which had the effect of amending Public Circular No. 8 as it applied to Japan. Significant among these was General License No. 68A which provided that Japanese citizens who had been residing in the United States from June 17, 1940 should have the status of generally licensed nationals. In addition, Public Circular No. 8A was issued reinstating practically all of the general licenses with respect to Japan and nationals of Japan, except certain trade licenses and do-business licenses. By December 20, 1941, when Public Circular No. 8A was issued, Foreign Funds

Control had already achieved adequate control over the Japanese problems in the United States so that it could, without jeopardizing our war efforts, effect this relaxation thus cutting down on the amount of administrative work required to be done by Foreign Funds Control as a result of having withdrawn all the general and specific licenses with respect to the Japanese on December 8.

2. General Rulings

(a) Trading with the enemy - General Ruling 11.

In March 1942, the Secretary of the Treasury issued General Ruling No. 11 in which it was provided that all transactions involving trade and communication with an enemy national were unlawful unless licensed under the freezing regulations. No freezing control license would be issued involving trade or communication with the enemy unless the license expressly refers to General Ruling No. 11. The Secretary of the Treasury was given the power under General Ruling No. 11 to license trading with the enemy and a license issued pursuant to Section 5(b) of the Trading with the enemy Act and Executive Order 8389 was also a license under Section 3(a) of the Trading with the enemy Act. Thus, the licensing procedure under the freezing orders were integrated with the trading with the enemy provisions of Section 3(a) of the Trading with the enemy Act.

General Ruling No. 11 also defined the terms "enemy national", "enemy territory" and "trade or communication with an enemy national". They modified the old 1917 restrictions against trade and communications under wartime conditions by substituting the new concept "enemy national" for the old "enemy" and "ally of enemy" terminology of the last war. This change was made so that the public could be afforded a more precise understanding of

the restrictions on trade and communications under wartime conditions. At the same time this change also permitted an effective adaptation of these restrictions to the pattern of the present war.

The term "enemy national" included persons in enemy territory; persons whose names appeared on the Proclaimed List; and representatives or agents of the Government of Germany, Italy, Japan, Bulgaria, Hungary or Roumania, whether situated within or without enemy territory. "Enemy territory" was defined as meaning the territory of Germany, Italy and Japan, together with the territory under their occupation or control.

Thus, General Ruling No. 11 was more specific as to the groups with which trade and communications was unlawful than had previously existed during the last war. During the last World War persons in the United States were charged with the duty of not trading or communicating with any firm in Latin America "doing business within the territory of any nation with which the United States is at war." While this was a commendable objective, yet in most instances persons in the United States had no way of knowing whether in fact a Latin American firm was "doing business within the territory of any nation with which the United States is at war". Under General Ruling No. 11, however, a person in the United States could freely trade and communicate with a person in Latin America unless such person was on the Proclaimed List or was known to be an agent or representative of such person or for one of the Axis governments or their satellites. In addition, under General Ruling No. 11 it was not unlawful to deal with persons in the United States merely because such persons were German or Italian aliens. Actually, the activities of persons in the United States which were inimical to the war effort and the security of the Western Hemisphere were dealt with by internal controls.

including the control of aliens by the Department of Justice, as well as the freezing control.

Simultaneously with the issuance of General Ruling No. 11 the Office of Censorship issued Communications Ruling No. 1 which had the effect of preventing the sending or transmitting of communications between persons in the United States and enemies as defined in General Ruling No. 11 except pursuant to a license issued by the Secretary of the Treasury under Executive Order 8389, as amended. Thus, General Ruling No. 11 was synchronized with Communications Ruling No. 1 so that persons regarded as enemy nationals for communication purposes were to be regarded as enemy nationals under the wartime prohibitions on trading with the enemy.

(b) Control of Securities, Currency, Checks and Drafts

(1) Currency Control - General Ruling 54.

It was recognized early in the war that the Axis required goods and services which it could only obtain from unoccupied or neutral areas. Certain of these goods and services could be obtained through force and through compulsion of various sorts, but there were limitations beyond which such force and compulsion could be used without causing the economy of the neutrals to collapse. Consequently, the Axis were required to pay for certain of the goods and services which it needed to obtain. That payment could be made directly by the Axis in terms of goods and services which it produces. But payment in this fashion weakened the Axis by diverting manpower from its own war effort. Therefore, from the Axis point of view, it was desirable to effect payment to the neutrals in the United States currency or securities which it may have looted from occupied areas.

Much United States currency had been accumulating in Europe for many years. It had accumulated there through remittances which immigrants to the United States had sent to relatives remaining in their native lands, through funds which American tourists had spent and through a variety of less important ways. The possession of this currency by the Axis placed at its disposal an economic weapon of tremendous importance. Inasmuch as United States currency was acceptable in neutral areas as long as it could be profitably employed in the purchase of goods and services in other parts of the world, it became the policy of the United States to reduce the value of such currency as far as possible and thus to make it valueless to serve Axis purposes.

Between 1940 and 1942, when the first steps were taken to impose import controls on currency we did get some reports on the currency coming into the United States from abroad. After General Ruling No. 5 was issued, in June 1940, the Collector of Customs in New York found currency coming through when he opened letters to determine whether securities were concerned. The Control requested the Collector of Customs in New York, which was the principal port involved, to keep a record of the currency coming into the States, and to furnish the Treasury with a monthly report of the persons who were shipping the currency and the persons to whom sent.

The first affirmative action to interfere with this flow of currency was taken in March, 1942, when Foreign Funds Control issued General Ruling 6A. This action could not be taken earlier since the Treasury actually did not know of an effective device which might have been used consistent with our position as a neutral.