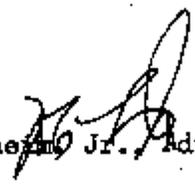


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By E NARA Date 12-13-07

MEMORANDUM

November 22, 1948

To: The Commission

From:  Walter C. Louchheim Jr., Adviser on Foreign Investment

Subject: Position Paper for Inter-American Economic Conference

The agenda for the Inter-American Economic Conference scheduled to be held in Buenos Aires in the spring of 1949 includes an item on uniform principles of corporate accounting and standards of fair disclosure. I have been requested to prepare, for discussion of the groups working on the financial aspects of the agenda, a paper to guide the United States Delegation as to the position which it should take on this subject.

I attach hereto a copy of a draft of this position paper.

Attachment.

Foreign Investments, box #66

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The agenda for the Inter-American Economic Conference includes under Point III, Economic and Financial Cooperation, Item 2D, Uniform principles of corporate accounting and standards of fair disclosure. The problem is to determine the position to be taken by the U. S. Delegation on the declaration of Article 26 of the Economic Agreement of Bogota which reads:

"The States declare their intention to promote sound investment by developing, whenever possible and in accordance with the laws of each country, uniform principles of corporate accounting, and of standards of fair disclosure to private investors."

Recommendation

The U. S. Delegation should

1. Actively support the inclusion of the substantive provisions of this Article in an Inter-American agreement on economic and financial cooperation.
2. In discussion of the Article, take the position that it contains positive advantages to other American Republics in their search for private capital in the U. S. and correlatively provides assurances to U.S. investors, the present lack of which is a discouraging factor in foreign investment.
3. In meeting possible objections as to the burdens which might result, take the position that the agreed standards of corporate accounting and fair disclosure should not exceed those which have been accepted corporate practice in the U. S. for a number of years.

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4. Propose that a committee be set up to study the areas in which uniformity would be desirable and to facilitate the carrying out of this Article of the Agreement by member countries with a minimum of interference with established customs.

Discussion

In recent discussions, the emphasis upon the desirability of promoting inter-American investment, particularly from private sources in the U. S., has been primarily upon the desirability and advantages to be derived by the recipients. The program for encouraging such investment has generally assumed that the investor will be accorded treatment by the recipient country which would not deprive him of his property rights without adequate compensation or of his ability to take advantage of profit potentialities. However, among the factors which inhibit U. S. investors from more general and active participation in foreign enterprises, it is known that their inability to obtain satisfactory and current information with respect to their investments and the ambiguity of such information as is available has been a very important factor. This has become of more significance because of the adoption of legislation in the U. S. under which investors are assured of fair disclosure and current information on their domestic investments. It is not believed that many of the other American Republics have adopted requirements similar to these, and therefore the disparity in this respect as between domestic and foreign securities has widened since the previous era of private foreign investment.

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Representatives of Latin American countries have expressed a hope that the securities of their enterprises might be given a wider distribution among investors in the U. S. and a place in the organized markets of this country. It is recognized that such steps would enable the raising of new capital in the U. S. from private investors in a manner which would avoid the ceding of control or managerial rights by the recipient enterprises. This is a result which Latin American countries seem very desirous of obtaining.

In order to obtain widespread investment participation by the sale of securities in the U. S., registration is required under the Securities Act of 1933, and in order to qualify securities for admittance to dealings on national securities exchanges registration under the Securities Exchange Act of 1934 is required. These acts were adopted to provide full and fair disclosure of securities sold and to regulate securities exchanges and over-the-counter markets to prevent inequitable and unfair practices on them. Both of these acts postulate certain basic principles of corporate accounting and of fair disclosure to private investors. The information requirements relate not only to the initial basic data filed upon the time of offering but are also of a continuing nature to assure that investors are currently apprised of the financial condition and operations of the enterprises in which they have invested.

It is probable that enterprises in the jurisdiction of most of the American Republics participating in this Conference are not presently required to keep their books in such form as to be able readily to comply

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with the requirements of U. S. law. It is probable also that the relationship of the corporations of other American jurisdictions to their stockholders in respect to the providing of adequate information on their affairs do not conform to standards prevalent in the U. S. and which are now generally accepted by investors in the United States as essential to good corporate management. In fact, the public information activities of corporations in respect to their stockholders has taken on new importance since the passage of the Securities Acts and extend well beyond the legal requirements of these Acts and of the rules promulgated under them. Many publicly held corporations not only distribute to their stockholders full annual reports of their operations, including the usual profit and loss and balance sheet statements, but also transmit quarterly statements on these operations.

Such Latin American enterprises as may wish to obtain public participation for their securities in the United States may be willing to imitate the U. S. corporations in these respects. Nevertheless, it is clear that unless there is an understood uniformity with respect to the terms employed in apprising our investors of corporate affairs outside of the United States there may be considerable misunderstanding and as a result, U. S. investors might be misled—resulting in possible fraud and loss of confidence in foreign investment generally. The terms used in the communications of corporations with their stockholders are largely those derived from the field of accounting which have been given rather careful analysis in the course of their evolution. The components of the

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balance sheet and of the profit and loss statement have been the subject of considerable public discussion, not confined to technical circles. During recent years, for example, there has been a noticeable public interest in the determination of what constitutes net profit. It could scarcely be expected that participation of investors in the United States would be forthcoming in Latin American enterprises unless there was a clear understanding as to the meaning of these and other basic terms. This consideration may well also apply to direct investment in which fewer investors are concerned, and where the investors seem to be in a better position to make their own surveys and audits. To what extent improved corporate accounting and informational practices, with governmental encouragement, would be of assistance in encouraging and facilitating direct and portfolio investment cannot be estimated; but investment certainly cannot be encouraged without such improvement.

It may be well to call attention to the following resolution which was adopted at the first session of the Economic Commission for Latin America:

"CONSIDERING that the shortage of invested capital in Latin America might be made up in part by investments of foreign private capital; that the Ninth International Conference of American States attached importance to investments of private capital, with a view to encouraging such investments in Latin America, not only on the part of investors in this hemisphere but elsewhere; and that wider opportunities for trading in securities might supplement the efforts made to facilitate private foreign investments in Latin America;

"INVITES the attention of member governments to the benefits which might be expected from listing of the quotations of capital issues on a great number of the stock exchanges of the world, to the extent that this can be accomplished in accordance with the legislation of the various countries, especially as

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regards their foreign exchange controls and the regulation of their stock exchanges, as well as official institutions dealing in securities."

In order to effectuate the purpose of this resolution by the admittance of Latin American securities on U. S. national securities exchanges, it will clearly be necessary for Latin American enterprises to conform to the accounting and disclosure requirements of U. S. law and regulation. No substantial diminution of these requirements or adjustment of U. S. laws and regulations in favor of foreign enterprises would be either economically desirable or politically feasible. Therefore, the Article under discussion would seem clearly to be a prerequisite to the accomplishment of the purposes of the above-quoted resolution and its effectuation would be measurably assisted by the adoption of the type of uniformity for which this Article declares.

In the adoption of laws and other measures to implement this Article, it will no doubt be necessary to provide technical advice and assistance to the participating governments. The problems of bringing about uniformity in the face of diversities of customs, laws and traditions will be formidable. In attacking these problems it should be proposed that a skilled and active committee be set up and instructed to prepare a program of study and action. The committee's terms of reference should include the preparation of specific recommendations as to accounting and reporting practices which should incorporate the basic common substance deemed essential for the accomplishment of the purposes of the Article. These recommendations might then be forwarded to the participating governments prior to the next session of the Conference for their use in considering appropriate legislative or other action to effectuate this Article.

11/22/48
