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FOREWORD

Since World War II the growth in international trade and investment fostered by such multinational cooperative ventures as the International Monetary Fund (IMF) and the General Agreement on Tariffs and Trade (GATT) has increasingly taxed the international financial system by demanding an increase in reserve holdings greater than that which the IMF and gold can provide. U.S. dollars have become the key currency through which international trade is financed, and a vast increase in the amount of foreign-held U.S. short-term liabilities has occurred. These net liabilities to foreign creditors, together with the international monetary system of pegged exchange rates and the U.S. commitment to redeem officially-held foreign dollar balances in gold, have created a situation in which the United States could some day find itself unable to meet the demands placed on its limited gold supply. Thus, the United States has moved in a variety of ways to reduce its balance of payments deficit in an effort to slow, and perhaps eventually reverse, the decline of the ratio of U.S.-held gold to foreign-held U.S. short-term liabilities.

Since the early 1960s the U.S. antideficit campaign has gradually intensified. A series of increasingly strict controls culminated in 1968 in the promulgation of regulations limiting foreign direct investment by U.S. firms, and recent relaxation in the scope of these regulations seems not to represent a change in the basic policy toward the payments deficit. Because of a combination of political considerations and the apparent need to bolster international confidence in the dollar, the U.S. government has acted as if it subscribed to the premise that its payments deficit in itself establishes the existence of a fundamental problem. While this premise is supported by traditional, or mercantilist, views of national accounts—as well as by speculators capable of making their view prevail by the fifth-column tactic of undermining confidence—it has nevertheless been rejected by a substantial body of economic opinion, which is represented in this symposium by Professor Laffer. Under this revisionist view, a nation filling the role of intermediary in international financial markets will *necessarily* run a deficit, which should therefore not provoke alarm. But the U.S. dollar would nevertheless appear to be a hostage in the hands of the alarmists, and U.S. policy seems therefore not to be entirely of its own making.

Although the political pressures on the United States are not all in one direction, the over-all tendency has been clear. Of late, the failure of the United States to curb domestic inflation has probably increased pressure to appear concerned over the payments disequilibrium. Such an appearance of good faith is also called for by the up-coming IMF meeting at which the so-called Special Drawing Rights, described in Professor Clark's article reviewing monetary developments, are to be

allocated. The other operative political factors would include the perhaps ambivalent attitudes of the nations affected, which may resent outside domination of their industrial life while at the same time desiring the benefits of foreign investment. Mr. Solomon and Professors Watkins and Rehbinder discuss from varying points of view the matter of using the international corporation as an instrument of national policies that may conflict with the policies of other nations.

Devising an antideficit strategy has been difficult for the United States. Restrictions on current account items would, in most cases, violate the spirit, if not the letter, of the IMF and GATT agreements. Therefore, by an elimination process which Professor Adler describes in discussing the policy problem and the gaps in understanding of the system being tampered with, the United States has found it expedient to curtail capital outflows. Mr. Ellicott provides an up-to-date analytical interpretation of the complex regulations of the Office of Foreign Direct Investment (OFDI). Professor Furth then discusses when such barriers might be appropriate and why the present economic conditions do not warrant their continuance. Professor Behrman, also attacking the regulations, urges that they may in fact have a long-term negative effect on our balance of payments, reducing both future income from foreign sources and demand for U.S. exports. Mr. Solomon, formerly Assistant Secretary of State for Economic Affairs, disagrees, contending that the regulations have merely forced U.S. corporations and investors to rely on the Euromoney markets to obtain dollars for use abroad and therefore have not significantly reduced the level of income-earning foreign investment.

The correlation of the growth of Euromarkets with the intensification of U.S. policies to improve its payments position is documented by Mr. Klopstock. His article also provides a description and economic assessment of the Euromarket phenomenon and an estimate of its effects on U.S. internal inflation and external payments problems. Finally, Mr. Bross provides an exhaustive legal treatise on the mechanisms and legal problems encountered by U.S. firms involved in Euromarket financing.

This symposium reflects the editors' recognition that the legal profession is becoming more and more directly involved in the trends of international finance and the national policies affecting these trends. Thus, the OFDI regulations have been largely a lawyer's problem, and the symposium attempts to assist the lawyer's efforts both to understand and work with them. Mr. Ellicott's and Mr. Bross's articles are largely lawyers' fare, and Professor Rehbinder helpfully considers the problem of conflicts with European laws. As a means of providing some additional insights on the background for foreign investment decisions, the antitrust and tax elements are briefly outlined by Mr. Fugate and Professor Smith. The editors hope that the symposium will be of use to both the veterans and the many newcomers in this new legal specialty.

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