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 ambiv- 
ential attitudes of the nations affected, which may resent outside domination of 
their industrial life while at the same time desiring the benefits of foreign invest- 
ment. 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. Re- 
strictions 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. Pro- 
fessor 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 in- 
come 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 signi- 
ficantly 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 be- 
coming 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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