

PRINCETON STUDIES IN INTERNATIONAL FINANCE, NO. 9

The United States
Investment Guaranty Program
and Private Foreign Investment

Marina von Neumann Whitman

INTERNATIONAL FINANCE SECTION
DEPARTMENT OF ECONOMICS AND SOCIOLOGY
PRINCETON UNIVERSITY · 1959

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The United States
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and Private Foreign Investment

By
Marina von Neumann Whitman

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DEPARTMENT OF ECONOMICS AND SOCIOLOGY
PRINCETON UNIVERSITY
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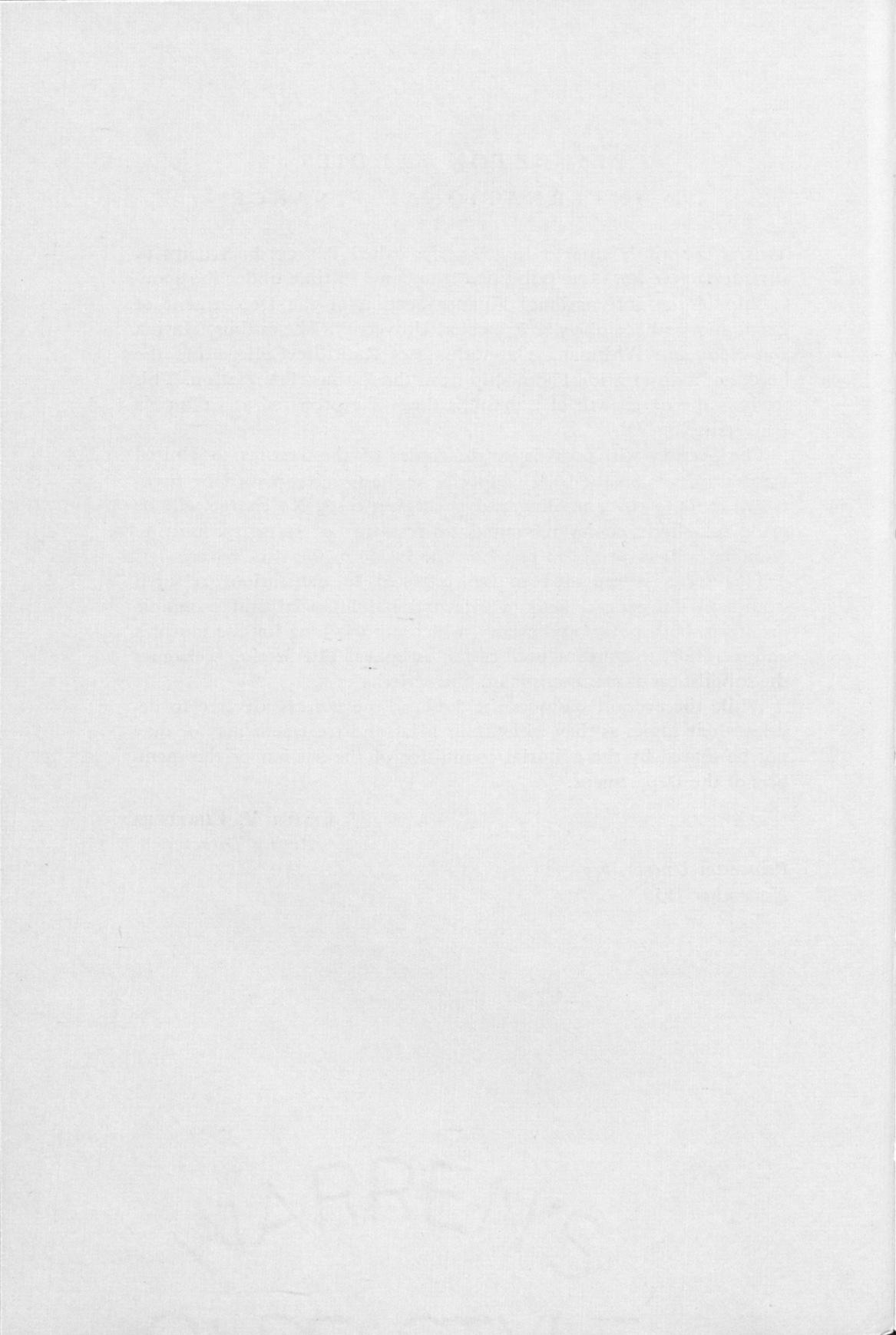
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LESTER V. CHANDLER
Acting Director

Princeton University
November 1959



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P R E F A C E

This paper was originally written during 1958 as a Master's Essay for the Economics Department of Columbia University's Graduate Faculty of Political Science. It was revised and brought up to date the following year for publication in the PRINCETON STUDIES IN INTERNATIONAL FINANCE series.

Among the many debts of gratitude which the writing of this study has incurred, two are particularly great. One is to my advisors at Columbia, Professors A. O. Hirschman and the late Ragnar Nurkse, for their invaluable guidance and criticism of the original essay. The other is to Messrs. Thomas P. Doughty and Laurence E. Potter, Associate Chief and Guaranty Officer of the Investment Guaranties Division of the International Cooperation Administration, for their unfailing readiness to provide information which often could not be obtained elsewhere and for their patient correction of a number of factual errors which had appeared in the earlier version of this paper. For the remaining errors, whether of fact or of interpretation, I have myself alone to thank.

Marina von Neumann Whitman

Princeton, New Jersey
October 1959

PREFACE

This paper was originally written during 1952-53 at the Economic Department of Columbia University for the Faculty of Political Science. It was revised and brought up to date the following year for publication in the *Princeton Studies in International Finance Series*. Among the many debts of gratitude which the writing of this study has incurred, two are particularly great. One is to my advisors at Columbia, Professor A. O. Hirschman and the late Ragnar Nurkse, for their invaluable guidance and criticism of the original essay. The other is to Messrs. Thomas P. Donohue and Lawrence E. Ford, Assistant Chief and Current Officer of the Investment Operations Division of the International Cooperation Administration, for their untiring eagerness to provide information which often could not be obtained elsewhere and for their patient correction of a number of factual errors which had appeared in the earlier version of this paper. For the remaining errors, whether of fact or of interpretation, I have myself done to the best of my ability.

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Princeton, New Jersey
 October 1955

Maurice von Neumann Whitman

I. PRIVATE FOREIGN INVESTMENT: ITS DIFFICULTIES AND ITS ENCOURAGEMENT

Introduction

THE importance of worldwide economic development to the foreign relations of the United States has, in recent years, revived interest in government guaranties for private capital invested in foreign countries.¹ Although a number of U.S. Government agencies have similar and often overlapping authorizations to issue guaranties of funds invested abroad by American citizens or corporations, the only sustained instance of this form of encouragement in the postwar era has been the Investment Guaranty Program now administered by the International Cooperation Administration (ICA).² Originating in 1948 as part of the European Recovery Program, this system of guaranties was intended to encourage the use of private American funds as an alternative to public grant and loan money in the task of European reconstruction and economic redevelopment. Although the users of such guaranties are charged an annual fee, a body of experience for establishing an actuarially sound schedule of charges simply does not exist, and actual backing for the liability incurred by the U.S. Government is provided by public funds.

The geographical focus of the Guaranty Program has changed considerably with altered economic and political conditions in the twelve years since its inception. Geared originally to European countries alone, it later expanded to include, at least potentially, the entire non-Communist world and, most recently, has entered a new phase of ex-

¹ It has been pointed out that "a great deal of confusion has resulted from the fact that the Investment Guaranty Program offered by the International Cooperation Administration, while couched in terms of a guaranty program, is really an insurance operation." (Ralph W. Golby, *Address* before the Second International Investment Law Conference of the American Society of International Law, Washington, November 22, 1958.) This distinction is quite correct but, having pointed it out, we shall continue to follow general usage and refer to the Program under discussion as a guaranty scheme throughout this paper.

² The Export-Import Bank of Washington has been authorized, since 1953, to issue not only full credit guaranties but also guaranties against specified limited risks in connection with its operations to facilitate United States exports and imports (see below, pp. 30-31, for details). The Development Loan Fund, founded in 1957, "is authorized to insure investors against all risks with the single exception that it cannot insure equity investments against normal business risks." (*ibid.*) Although both these agencies possess investment guaranty powers considerably broader than those granted by Congress to the ICA Program, both apparently regard their functions as complementary rather than competitive with the operations of the latter, the Export-Import Bank because of its specialized objectives, the Development Loan Fund because it is intended as a source for funds only when private financing is not available "from other free world sources on reasonable terms." (*ibid.*)

clusive concentration on the economically less developed nations. While it was conceived as, and has remained, a program of limited insurance against certain non-business political risks of the kind most commonly faced by foreign investors today, its functional coverage in this area has gradually expanded until, at present, guaranties are available against three major threats to continued profitability: convertibility blockage, expropriation, and war damage. As this listing indicates, the Program is directed primarily to the needs of proprietary investors, probably reflecting the fact that, at the time it originated, portfolio investment had virtually disappeared. Loan and minority equity investments are also eligible for coverage, and the administrators are anxious to expand this aspect of the Program, particularly since portfolio investment has recently shown strong signs of reviving, but the emphasis on direct investment is likely to remain unchanged at least in the near future.³

The Investment Guaranty Program owes its existence and expansion to two considerations which have become increasingly significant in the years since World War II. One is the recognition of the importance to our foreign policy and national security objectives of mobilizing American resources to assist in the reconstruction and development of other countries. The other is the accompanying realization that the recovery of international private capital flows from the prolonged shock of depression and war is a slow process at best, requiring strong governmental encouragement if such funds are gradually to assume the development task performed at first almost exclusively by public grants.

The first American funds designated for multi-country assistance in the postwar era went abroad under the Marshall Plan, directed chiefly toward Europe and intended for reconstruction rather than development. But by 1949, with President Truman's announcement of his "bold, new plan," the Point Four Program, it was clear that the Administration considered the first phase ended, and that emphasis was now to be placed on the economic development of the non-European free world. Since then, every administration has expressed concern for this program, and agencies to deal with it have proliferated. The Export-Import Bank of Washington has in the past decade contributed to the financing of a number of social overhead projects such as the

³ So far, guaranties have been issued for a few loan investments, and the Investment Guaranties Division is eager to expand this type of coverage. The chief problem is that most instances of portfolio investment do not qualify as "new" investment under the Program's eligibility rules.

Helmand Valley dam and power project in Afghanistan. The Investment Guaranty Program was extended to the non-European world in 1949 and, simultaneously, the Technical Cooperation Administration was set up to provide crucial knowledge and skills to less developed countries. In 1956 the International Finance Corporation was created as an affiliate of the International Bank for Reconstruction and Development, at American suggestion and with our strong financial backing, "to further economic development in its less developed member countries by investing—without government guarantee—in productive private enterprises in association with private investors who can provide competent management."⁴ By mid-1959 the Development Loan Fund, established by Congress under the Mutual Security Act, had committed \$740 million in loan funds for development projects in underdeveloped countries which have been unable to obtain complete financing elsewhere.

Accompanying this emphasis on foreign economic development has been the firm conviction that private, not public, investment must be the bulwark of such a program. This attitude results from several forces: the traditional American predilection for private enterprise, with its accompanying concentration of business and technological skills in private hands; the conviction that, against a background of world ideological struggle, the transmission of the capitalist outlook to the increasingly powerful underdeveloped nations along with the wherewithal for material betterment is particularly important; and the preference for private funds as money without political strings or "smell." But the most important factor is the very simple desire to conserve public funds. Behind every denunciation of grants as a bureaucratic waste of scarce resources and an unfair burden on the taxpayer lies the legislator's knowledge of the political undesirability of increased taxation and the government administrator's experience with time-consuming, crippling dependence upon annual Congressional appropriations.

Ever since President Truman's declaration, in his announcement of the Point Four Program, that "we should foster capital investment in areas needing development,"⁵ spokesmen for administrations of both parties have repeatedly expressed their preference for private foreign investment and their intention to encourage its expansion. At the same time, however, the actual figures on foreign investment in

⁴ International Finance Corporation, *First Annual Report, 1956-1957*, Washington, 1957, p. 2.

⁵ *The New York Times*, January 21, 1949, p. 4.

the postwar era made it increasingly obvious that the restoration of private capital flows on a scale sufficient to replace public funds entirely in meeting the foreign capital needs of less developed nations would not come quickly, and that public overhead investment would be a prerequisite in many areas.

Portfolio investment, which had grown at a tremendous rate between 1918 and 1929, reaching a cumulative total of \$7.8 billion in the latter year, suffered losses amounting to \$2.5 billion in interest defaults and billions more in market value declines during the 1930's⁶ and remained virtually at a standstill during the first postwar decade. Such investment has increased considerably in more recent years; between 1957 and 1958 its net annual outflow grew from \$0.9 billion to \$1.4 billion. But, except for Israel, which has a rather unique relationship to the American capital market, the underdeveloped countries' access to American portfolio funds seems to depend upon the existence of appropriate intermediary institutions, which are just beginning to be developed. For the present, and probably in the foreseeable future as well, direct investment must be relied on to provide a large share of the developmental capital needed by backward areas.

Direct private foreign investment,⁷ which had also grown at a very rapid rate in the decade immediately preceding the depression of the 1930's, did not share in portfolio investment's drastic losses and decline, but remained virtually at a standstill, in real terms, between 1929 and 1946, when its cumulative book value was \$8.3 billion.⁸ For the next five years it increased at an annual rate of about \$1 billion, which rose to \$1.5 billion for the 1951-1955 period. During 1956 and 1957 a more rapid increase took place; direct private investment abroad rose at an all-time record rate of more than \$3 billion annually, totalling \$25.3 billion by the end of the latter year. During 1958 its growth slowed considerably, but this is generally regarded as a temporary phenomenon, due to the effect of the recession on American

⁶ Cleona Lewis, *The United States and Foreign Investment Problems*, Washington, 1948, p. 142.

⁷ In discussing direct investment, I have adopted the definition of the U.S. Department of Commerce: "Foreign enterprises in which American investors or parent companies have a controlling interest, consisting of an ownership of 25 percent or more of the voting stock of foreign subsidiary companies, or unincorporated foreign branches." U.S. Department of Commerce, Office of International Trade, *Factors Limiting U.S. Investment Abroad*, Washington, 1953, Part I, pp. 1-2.

⁸ All figures concerning American foreign investment since World War II, unless otherwise noted, are those of the U.S. Department of Commerce, Office of Business Economics, and are cited either in the *Survey of Current Business* or its statistical supplement, *Balance of Payments* (1958).

business investment in general. (For the book value of United States direct investment abroad, by area, in selected years, see Table I.)

Table I
United States Direct Investment Abroad—Book Value by Area
As of December 31
(Billions of dollars)

Year	All Areas, Total	Canada	Latin America	Europe ¹	All Other
1897	.6	.2	.3	.1	*
1914	2.7	.6	1.3	.6	.2
1929	7.5	2.0	3.5	1.5	.5
1936	6.7	2.0	2.8	1.4	.5
1943	7.9	2.4	2.7	2.3	.5
1947	8.3	2.6	3.6	1.4	.7
1948	9.6	2.9	4.1	1.7	.9
1949	10.7	3.1	4.6	1.9	1.1
1950	11.8	3.6	4.7	2.2	1.3
1951	13.1	4.0	5.2	2.4	1.5
1952	14.8	4.6	5.8	2.6	1.9
1953	16.3	5.2	6.0	3.0	2.0
1954	17.6	5.9	6.2	3.2	2.3
1955	19.3	6.5	6.6	3.6	2.6
1956	22.1	7.5	7.4	4.3	2.9
1957	25.2	8.3	8.3	4.9	3.7
1958	27.1	8.9	8.7	5.4	4.0

¹ Includes Eastern Europe before 1947; includes Western European dependencies since 1929.

* Less than \$50 million.

Note: Details may not add to totals because of rounding.

Source: U.S. Department of Commerce, Office of Business Economics.

Foreign Investment and Economic Development

During the period under discussion, the proportion of direct investment going to underdeveloped areas has varied irregularly.⁹ With the important exception of Latin America, it has always been small; during 1957 direct investment outside the Western Hemisphere and Western Europe equalled only one-eighth of the annual total. In the same year, however, Latin America received a record 40 percent of that total, thus appropriating the lion's share which had traditionally gone to Canada. During 1958, in turn, investment in Latin America and Canada, as well as in Europe, dropped, while there was a significant increase in Asia and Africa. As Table I indicates, over the past ten years the trend of direct investment seems to be in favor of the

⁹ By "underdeveloped areas" are meant all the nations of the non-Communist world outside of the United States, Canada, Western Europe, Australia, New Zealand, Japan, and the Union of South Africa.

less developed areas of the world. (For the area and industry distributions of United States direct foreign investments at the end of 1958, see Table II.)

Table II
Distribution of United States Direct Foreign Investments, December 31, 1958
Total Book Value: \$27.1 billion

<i>By Area</i>		<i>By Industry</i>	
Canada	33%	Petroleum	36%
Latin America	32%	Manufacturing	31%
Western Europe	16%	Mining and Smelting	11%
Middle East and Africa	8%	Public Utilities	7%
Other	11%	Trade and Distribution	6%
		Other	9%

Source: U.S. Department of Commerce, Office of Business Economics.

The gradually lessening need to supplement private with public funds if the American contribution to foreign development is to be sufficiently great is reflected in the changing balance between government economic aid and private investment outflow. During the post-war period as a whole such non-military aid, in the form of grants and loans, has tended to overshadow private capital movements, averaging about \$3.6 billion annually since 1946. Such aid has dropped, however, from an all-time annual high of \$8.9 billion in 1947 to about \$2.5 billion in 1958, while yearly outflows of private funds have increased from an average of well under \$1 billion in 1946-1949 to over \$3 billion in 1958. The drastic shift in direction of government aid during these years is also significant. In the Economic Cooperation Administration (ECA) period the bulk of public funds went toward the reconstruction of European economies; in 1958 roughly nine-tenths of our economic aid expenditures went for the stabilization and development of less advanced areas. Bearing in mind the complementary nature of public and private investment, the pattern is an encouraging one; both the recent European experience and present developments give reason to foresee that "as the less developed countries achieve a substantial degree of economic development, and as they achieve a greater degree of trust in us . . . the opportunities for private capital will grow . . . [and then] private capital can, should, and will take the burden of development away from government."¹⁰

The possibility of greatly expanded investment in underdeveloped

¹⁰ International Development Advisory Board, *A New Emphasis on Economic Development Abroad*, Washington, 1957, p. 13.

areas is indicated by their substantial absorption of foreign public capital at present, by the United States' growing need for a few crucial raw materials which should stimulate production abroad for the American market,¹¹ and by the increasing scope for investment in manufacturing, revealed by a number of experiences in Latin America,¹² which can be expected to develop as industrialization increases the size of the market and the supply of trained labor. That room for expansion exists on the lending as well as on the borrowing side is suggested by the fact that only 1.5 percent of the total assets of United States corporations are currently invested outside of this country and Canada.¹³ According to the 1950 Commerce Department census, only 2000 companies had any foreign investments at all, and 442 firms accounted for 93 percent of them. Even assuming that, as is likely, only firms with assets over \$5 million are in a position to conduct foreign operations, only 5.9 percent of the funds of this more limited group are thus committed; and of the giant corporations with assets exceeding \$50 million, only one-third have investments outside North America.

Obstacles to Foreign Investment

While considerable scope exists for profit on both the sending and the receiving sides of private foreign investment, government assistance and encouragement are necessary if such capital flows are not to be far more limited in both overall size and geographical direction than American foreign policy objectives demand. The most specific and immediately obvious reason for this is that the countries which require foreign investment most desperately often exhibit a preference for public over private foreign investment. Memories of European colonialism or American dollar diplomacy, a deep-rooted fear of the loss of cultural identity through acquiescence to Western economic leadership, and, often, an unspoken feeling, enhanced by more than a decade of American grants or soft loans, that funds from industrialized areas on a free or low-cost basis are due them by natural right, all underlie the popular hostility to foreign private enterprise in most

¹¹ For an account of the strategic raw materials for which the United States will probably have an increasing need in the future, see the President's Materials Policy Commission, *Resources For Freedom*, Washington, 1952.

¹² The history of Sears Roebuck de Mexico is an outstanding example. See Richardson Wood (National Planning Association), *Sears Roebuck de Mexico, S.A.*, Washington, 1953.

¹³ Investment in Canada is not regarded by most businessmen as foreign investment at all.

less developed countries. These latent feelings are often brought to the fore by the tensions inherent in direct investment situations: between insistence on complete control by those providing the capital and fears of infringement on national sovereignty; between demands that the profit motive be paramount and requirements that the derivation of local benefits and the expansion of opportunities for native populations be accorded primary importance. Although the two sets of objectives are frequently compatible, fears and misunderstandings often lead these countries to behave in a manner which investors regard as inimical to the profit motive.

Besides this essentially new obstacle to international capital flows there exists the problem of a far older and more fundamental economic phenomenon: the basic difference between domestic and foreign investment. While the criteria for the two types of investment are the same (safety of principal, income yield, and marketability), there are crucial differences, political, monetary, and social, in the conditions surrounding them, so that objective considerations, as well as "the natural conservatism of capitalists," require the promise of considerably greater returns before "capital moves out of the home-land for permanent investment abroad."¹⁴

The differential in interest rates necessary to set in motion the flow of funds abroad can generally be regarded as a measure of the costs of the international transfer of capital, in terms of the extra trouble and risk involved. At times, however, "risk," in the form of subjective estimates of uncertainty by individual investors, can become so great that the provision made in the market price of capital cannot induce investment or can do so only at a price prohibitive to the borrower. At such times, and there are indications that the world, or at least large areas of it, may have been suffering from such a situation during the postwar era, the market ceases to regulate the international flow of capital and the state, if it has an interest in the preservation of these flows, must intervene to restore normal conditions.¹⁵ Government action to alleviate such a paralysis can take one of two broad forms. It can encourage and protect the foreign investments of its nationals directly by various means, or it can shift the risk to itself by guarantying its citizens' investments, either totally or against certain

¹⁴ E. W. Kemmerer, "The Theory of Foreign Investments," *Annals of the American Academy of Political and Social Science*, November 1916, p. 6.

¹⁵ The breakdown of the operation of the international private capital market and the necessity for government intervention are discussed in Elia M. Shenkman, *Insurance Against Credit Risks*, London, 1935, pp. 162-176.

specified risks, and thus, if it chooses to offer such guaranties selectively, increase or divert the stream of export capital in the direction its interests require.

Attempts to Encourage Foreign Investment

Most instruments for the direct encouragement or protection of foreign investment fall, in turn, into one of two categories: those which involve the placement of capital and the removal of obstacles to profitable investments, and those which relate to the protection of citizens' capital after investment has taken place. Into the first category fall attempts by one government to induce or force another to develop laws and conditions favorable to investment,¹⁶ and to win special advantages, such as subsidies, concessions, or guaranties for its citizens. Such "inducements" may range all the way from friendly advice and good offices through diplomatic and economic pressure to threatened or actual military intervention.

During the "battleship diplomacy" period of United States history, in the late 19th and early 20th centuries, aggressive diplomatic support of American enterprise reflected the "active intervention" doctrine which became official creed in the mouth of President Taft. During this period diplomatic concession-seeking was widespread and, even after the specific renunciation of the use of force for the collection of international debts in the 1909 Hague Convention, U.S. Government protection of its citizens' investments extended to the point of military interference in Mexico (in 1916), Nicaragua and Shanghai (both in 1927). Such behavior was the logical result of President Coolidge's philosophy that ". . . the person and property of a citizen are a part of the domain of a nation even when abroad."¹⁷ But with the wholesale defaults of the 1930's and the inception of the "good neighbor" policy in our relations with Latin American nations, the use of military intervention and overt dollar diplomacy ceased. The United States has foresworn such behavior in a number of inter-American agreements, and the psychology of the world struggle in which she

¹⁶ Eugene Staley's intensive study of the relationship between war and private investment in the years 1880-1930 led him to conclude that, "Indeed, the export of capital to countries previously untouched by capitalistic industrialism necessitates the simultaneous 'export' of specialized governmental forms and institutions, such as commercial law, and specialized economic institutions, such as the wage system. Out of this fact, . . . a deep and inevitable conflict emerges between capital-importing and capital-exporting countries when their social institutions are radically different. . . ." *War and the Private Investor*, New York, 1935, p. 142.

¹⁷ Quoted in Lewis, *op. cit.*, p. 221.

is presently engaged makes it highly unlikely that she will return to the use of such instruments in the foreseeable future.

The fact that "policies pursued by governments strongly affect the export of investment capital by their nationals"¹⁸ remains true, however, and the government continues to take action on several fronts to compensate for the fact that foreign investments are inevitably subject to extraordinary political hazards. Although the United States no longer considers it good policy to try to force other countries to order their internal affairs to attract foreign investors, it is nonetheless true that ". . . a serious and explicit purpose of our foreign policy [is] the encouragement of a hospitable climate for such investment in foreign nations."¹⁹ Such encouragement includes propaganda on both diplomatic and popular levels, constantly reminding underdeveloped areas of the advantages to them of foreign investment, and a readiness to give advice and assistance to countries desiring to improve their attractiveness to foreign investors.

Among the other important instruments in the capital-placement category is the dissemination of information concerning investment conditions and opportunities abroad. Such opportunities uncovered by consular officials and ICA aid and technical missions are transmitted to the Commerce Department for distribution through business and financial media, and the State Department also cooperates with the Commerce Department in the collection of information for several series of investment studies and documents published by the latter. American diplomatic and consular officials are expected to provide information and assistance on specific business problems, and the Commerce Department carries on business counselling and arranges contacts between United States firms and foreign governments and corporations.

In the realm of protection of existing investments, force has also given way to persuasion, propaganda, and bargaining. The State Department still intervenes to prevent discrimination against American holders of defaulted bonds, as it did in Germany and Brazil in 1933 and 1934, but in recent years its intervention has been limited to "protest" or "diplomatic intervention." Our government has also participated in arranging settlements for expropriated American properties abroad, as in the cases of Mexico, Russia, Bolivia, Fascist Italy, and, most recently, Yugoslavia, but it has had to recognize that its success

¹⁸ *Ibid.*, p. 220.

¹⁹ President Eisenhower's State of the Union message, quoted in *The New York Times*, February 3, 1953, p. 14.

generally depends not so much on the intrinsic justice of its claims nor even on its national strength as on the specific bargaining situation.

The kind of specifically anti-capitalist expropriation which has become common today poses grave new problems for the State Department, and this, coupled with the fact that in many cases our government has been able to recoup only a very small percentage of losses,²⁰ makes it unlikely that potential foreign investors will regard such protection with much assurance. And while the Foreign Bondholder's Protective Council, a private corporation with official government sponsorship which has operated since 1933 to protect the interests of members in negotiating for adjustments of defaulted bond issues, has met with at least partial success in a number of cases, it is not at present designed to cope with the problems faced by proprietary investors, and therefore can do nothing to encourage a major portion of today's foreign investment.²¹

Recognizing that the traditional types of government action are at best marginal and inadequate to stimulate a significantly increased flow of capital to other lands, both the government and the business community have set forth numerous suggestions for the use of more radical instruments, such as some form of tax deferral (which would permit foreign subsidiaries of American companies to defer payment of taxes on income until it is remitted to the United States in dividends, as foreign branches are allowed to do) or tax relief, partial or total, for foreign investors. Supporters of these plans, including a number of legislators who have from time to time introduced bills to this effect in Congress, argue that such relief would not only have a tremendous psychological incentive effect, but would permit returns to increase to a point where they would outweigh the extra risks of foreign investment, and would eliminate the competitive disadvantage suffered by American companies competing abroad against other foreign corporations paying no taxes in their home countries.

Such broad tax measures have met with strong opposition, however, on a number of grounds. It has been pointed out that such action would be quite frankly a subsidy, violating the principle of tax equity, which holds that taxes must be equal on all earnings, regard-

²⁰ Lewis, *op. cit.*, p. 225.

²¹ The same is true of the provisions of the Johnson Act of 1934, which forbids the sale on American private capital markets of the obligations of governments in default of their debts to the United States. In 1945, as a result of the Bretton Woods Conference, this Act was amended to exempt all member nations of the International Bank and the International Monetary Fund, thus virtually nullifying its provisions. *Ibid.*, pp. 145-146.

less of geographical origins.²² The problems of increased concentration of economic power, since the largest corporations are the major foreign investors, and of a considerable loss of revenue to the Treasury from unselective tax proposals, favoring both old and new enterprises in advanced as well as underdeveloped countries, have also been raised. Finally, opponents of tax relief insist that it can do nothing to alter the actual risks of foreign investment, and point to a body of evidence which casts doubt on the probable efficacy of across-the-board tax measures.²³

Flexible bilateral tax treaties, selective in that they might apply only to new investment and could be negotiated with countries in which the United States wished to stimulate investment and individually tailored to suit specific needs, offer an alternative form of tax incentive.²⁴ Such treaties would be welcomed by countries, such as many Latin America nations, which at present are prevented by the United States tax-credit system from using low taxes to attract United States equity capital. Problems of negotiation and administration would arise, of course, but the chief questions in connection with such a plan are those inherent in almost any scheme of government incentives: whether the objective is important enough to national welfare to justify the violation of the principles of strict equity, and whether the returns can be expected to justify the cost incurred by the government in the operation of the subsidy.

In their search for methods of government protection for private foreign investment, the postwar administrations have promoted both multilateral and bilateral treaties dealing with the treatment of such investment. Potentially the most important of these was the Charter

²² The United States has in the past seen fit to violate this principle for the sake of specific foreign policy objectives. Investors in China (now Taiwan) can obtain tax reductions under the China Trade Act of 1922, while Latin American enterprises enjoy an across-the-board reduction of 14 percent by virtue of the Western Hemisphere Trade Corporation Act of 1942.

²³ A 1951 survey for the National Industrial Conference Board found that, while a majority of businessmen interviewed favored major changes in the tax laws, a far smaller percentage cited United States taxes as a deterrent to foreign investment. The authors of a study for the Commerce Department two years later concluded that: "the role of United States taxation in investment decisions has been minor in the past and that changes in United States taxes cannot alone be expected to have a significant effect upon the attitudes of the executives responsible for investment decisions." See National Industrial Conference Board, *Obstacles to Direct Foreign Investment*, New York, 1951, p. 22; and E. R. Barlow and I. T. Wender, *United States Tax Incentives to Direct Private Foreign Investment*, Cambridge, 1954, p. 4.

²⁴ The United States has, at present, tax conventions with at least 15 countries providing for the prevention of double taxation and fiscal evasion. These treaties are nearly all with Western European or British Commonwealth nations, and are based on the tax-credit system presently followed in the United States.

of the International Trade Organization, which was signed by 53 countries at the 1948 Havana Conference. But, after two years of discussion, the U.S. Senate failed to ratify it, chiefly because of concern over the exceedingly vague protection given foreign capital and the considerable rights of control conceded to capital-receiving countries. The agreement signed by 20 American nations at Bogota in 1948 provides a number of apparently satisfactory assurances regarding the treatment of foreign investments and the convertibility of earnings and capital. But these commitments are essentially nullified, from the investor's viewpoint, by reservations subordinating them to the constitutional laws of each country and making them subject to the jurisdiction of the national courts.²⁵ The resulting document was regarded as vague and dangerous by American business and as unacceptable by many Latin Americans because it made too many concessions to foreign investors. There could be little hope that a treaty so received would do much to stimulate the flow of private capital abroad.

Since these setbacks, the United States has concentrated on the less demanding bilateral approach; in the postwar era modernized treaties of Friendship, Commerce and Navigation, containing an investment clause covering such topics as the right of United States capital freely to enter into business, national or nondiscriminatory (most-favored-nation) treatment for established investors, freedom from restrictions regarding ownership and management, assurances of convertibility of earnings and capital, and provision for prompt and adequate compensation in the event of expropriation, have been negotiated with nine underdeveloped countries.²⁶ Five of these have so far been ratified by the legislatures of both contracting nations. The essential problems in extending this approach remain the same as in the multilateral case, the most important one being that a treaty, which must be based on consensus, cannot create but can only record the existence of a favorable investment climate.

The subject of greatest contention between capital-exporting and capital-importing nations is that of expropriation. For, while the right of a sovereign nation to expropriate private property is universally recognized, the United States' position is, in the words of Secretary of State Cordell Hull's note to Mexico in 1940, that this right ". . . is

²⁵ Seymour J. Rubin, *Private Foreign Investment: Legal and Economic Realities*, Baltimore, 1956, p. 82.

²⁶ Ethiopia, Israel, Korea, Nicaragua, Iran, Colombia, Haiti, Uruguay, and Pakistan. The first five mentioned have been ratified by both signatories.

coupled with and conditioned upon the obligation to make adequate, effective and prompt compensation."²⁷ But there does not exist any internationally accepted standard of what constitutes adequate compensation. On such matters as national treatment versus international arbitration in cases of wholesale expropriation and whether "effective" compensation means dollars or local currency, the views of American investors and capital-importing nations are poles apart; indeed, in a case of general expropriation the host country would almost certainly find it difficult or impossible to make payment in dollars.

The question of sovereignty, and of how much control over her internal affairs a country can be expected to sign away arises again in connection with treaty provisions regarding convertibility. Nearly all such documents permit the suspension of convertibility under certain conditions and the provisions of even the Uruguayan treaty, the one most favorable to investors, are sufficiently vague and open to abuse as to make investors uneasy. On the other hand, one cannot expect any underdeveloped country to give absolute exchange priority to foreign investors.

The so-called "Calvo clause" in the constitutions of many Latin American nations, which states, in effect, that a foreign investor's government may not interfere in his behalf in matters affecting his relationship with the host government, makes the negotiation of treaties with these countries a special problem. Not only are American investors loath to forswear the protection of their own government in the event of hostile action by a foreign sovereign power, but the U.S. Government itself refuses to recognize the Calvo doctrine even in cases where an investor has specifically agreed to it. It feels that "it, as a government, has an interest in the foreign investment that its national cannot give or contract away."²⁸

Aside from a number of technical problems, such as the limitation on reciprocity imposed by certain United States state laws restricting the right of aliens to exploit mineral resources, and the reluctance of many countries to make commitments at the diplomatic level which they are willing to grant on an individual basis to specific enterprises,²⁹

²⁷ *Department of State Bulletin*, April 13, 1940, p. 380.

²⁸ Rubin, *op.cit.*, p. 62.

²⁹ India, which until 1957 consistently refused to negotiate an investment treaty, in 1951 signed an agreement with the Standard-Vacuum Oil Company providing all the safeguards a treaty would have given, including assurance of adequate compensation in the event of nationalization, exemptions or reductions of duties on crude oil and equipment, adequate foreign exchange for the repatriation of profits, and assurances against price undercutting by national refineries. Reported in *The Economist*, December 8, 1951, p. 1429.

two other important considerations prevent investment treaties from providing the kind of security which could be expected to increase the international private capital flow significantly. The most crucial one is that numerous experiences with harassment and persecution by unfriendly host governments have convinced investors that a government bent on doing so can always get around any specific safeguards written into a treaty. Without a common outlook and a sense on both sides of the mutual benefits of private investment, the question of the point at which legitimate regulation ceases to be that and becomes a "taking" is essentially unanswerable, and in recent years investors have often come to fear creeping expropriation in the guise of taxation or regulation more than the outright variety. The second problem, which takes on increasing importance in view of the political instability of many underdeveloped areas, is that "risks of confiscation or seizure cannot be fully eliminated through treaties so long as the possibility exists of a change in government in the foreign country through revolution or war."³⁰ Obviously this problem has existed as long as treaties themselves, but it has become more crucial at a time when the government which succeeds to power may well be one which does not recognize the rights of property-owners at all, and which may help consolidate its position by the very act of repudiating such treaties.

The essential problem with the treaty approach remains a fundamental difference of outlook; the American businessman wants far more in the way of safeguards, as indicated by the draft international codes for foreign investment set forth by the National Association of Manufacturers and the International Chamber of Commerce, than the statesmen of underdeveloped countries can promise without losing the support of their electorates. Among such requirements would be freedom from regulations regarding ownership by or employment of nationals, the subordination of the host country's constitutional laws to some international standard of fair treatment, and the admission that its national courts might not always render justice to foreign investors. The fact that an investment treaty can only reflect a pre-existent harmony of viewpoints leads to the unfortunate paradox that where treaty assurances are meaningful they would probably not be necessary and where they are needed they either cannot be negotiated or, if they are, often result in a document which satisfies neither side and, if anything, only increases the aura of resentment and mistrust so fatal to effective business relationships.

³⁰ Department of State, *Point Four*, Washington, 1950, p. 73.

The Guaranty Approach

The final way in which a government can affect the export of private capital is by entering into and altering the capital market itself, by giving loans or guaranties to its own investors. A certain number of such loans have been made by the Export-Import Bank, for special projects in connection with our specific military or economic aid programs, and, during the past two years, by the Development Loan Fund. But, aside from the problems arising from the direct subsidy nature of such loans and the impossibility of avoiding any appearance of favoritism, the pragmatic preferability of purely private over public foreign investment has already been stressed. While there are mounting indications that public grant or soft-loan programs will perforce play a role in our capital-export plans for a considerable time to come, the necessity of developing new and better methods of encouraging the export of private capital is, if anything, thereby increased. And with the advent, in recent years, of new, purely political hazards which have turned normal credit risks into abnormally heavy catastrophe risks, the state-guaranty idea has become an increasingly appropriate alternative.

Although the concept of public guaranties is not new, views regarding the scope and function of such plans have changed considerably during the past century. In the 19th century it was generally the capital-importing governments alone which acted as guarantors, and their assurances were against the ordinary business risks of loss or default, inasmuch as they were usually guaranties of the payment of dividends at a certain rate, rather than insurance *against* certain risks (see footnote 1, p. 1). No fees were charged for such guaranties;³¹ they almost always amounted to state subsidies of considerable proportions, and were generally regarded simply as an alternative to the issuance by a state of its own bonds in order to obtain foreign funds for reloaning to favored banks or enterprises.

The most impressive instance of this variety of guaranty, its effect and its ultimate price, was the guaranteed-bond boom on the London capital market, which was to last for more than half a century and which very probably had its origins in the tremendous profitability of one of the first ventures so financed, the Erie Canal. Railroad in-

³¹ Some of these plans, notably the Argentine one, did require that, when an enterprise earned more than the guaranteed rate of profit, it apply the excess to compensating the government for sums paid under the guaranty in less profitable years. But this provision was nearly always honored in the breach. J. H. Williams, *Argentine Trade Under Inconvertible Paper Money*, Cambridge, Mass., 1920, p. 89.

vestment was a favorite object of such issues, and numerous lines in India³² and the eastern United States were "built by private corporations insured against loss by public bounty,"³³ as the promise of "a sure 5 percent" brought out a flood of middle-class savings. As British investment abroad increased steadily, other countries caught the fever, and by the '60's and '70's Canada, France, Russia, Austria, Hungary, and Turkey were all using the guaranty system to attract foreign capital into railway development. Both private bankruptcy and public repudiation were common; in several of the United States and, later, in Argentina, the burden of government guaranties proved the largest single cause of governmental default,³⁴ while in India the taxpayer paid heavily for British capital invested in his country.

The motives behind the guaranties described above, issued by the borrowing countries, were chiefly economic. Such backing for the obligations of a country's own colonies for similar reasons has been common, but otherwise guaranties by the lending government have been relatively rare, and their origins invariably political. A total of twelve loans to a number of European countries, most of them jointly guaranteed by a combination of larger European powers, represents a complete roster of such transactions prior to World War II.³⁵ The outcome of these loans, only three of which were ever paid in full by the debtor, indicates strongly that economic soundness and productivity were not the criteria followed by the guarantors.

The nearest predecessors of the present Investment Guaranty Program, both chronologically and in terms of similarity, were the export-credit guaranty schemes adopted by a number of European countries in the 1920's.³⁶ The British Government experimented with a series of complicated programs, each of which guaranteed a certain percentage of the exporter's investment in a given transaction, in return for which the rights of the exporter were turned over to the government,

³² The terms under which the bulk of British investment in India, the largest single unit of international investment during the 19th century, was made were set by the two guaranteed-interest railway contracts signed in 1849. They provided for a 5 percent interest guaranty by the East India Company, the semipublic body which administered India for the Crown, on all capital deposited with it by the railway companies. In return, the Company had complete control over the railways, net receipts were limited to 10 percent annually, and at the end of 99 years the railways would become the property of the government without compensation except for the machinery, plant, and rolling stock. David Thorner, *Investment in Empire*, Philadelphia, 1950, pp. 168-179.

³³ L. H. Jenks, *The Migration of British Capital to 1875*, New York, 1927, p. 74.

³⁴ Williams, *op. cit.*, pp. 116-127.

³⁵ Lewis, *op. cit.*, pp. 232-237.

³⁶ The interwar credit schemes are described and their performance analyzed in Shenkman, *op. cit.*, pp. 177-339.

which was empowered to take steps to recover the debt in event of default. The British plans and their numerous imitators invariably lost money because, in the view of most analysts, they were insuring not political but ordinary business risks. The burden became too much in 1931, when the economic crisis and ensuing exchange controls forced the default of solvent debtors, and the British Government was forced to revert to the private insurance principle of paying only upon proof of the debtor's bankruptcy, not simply in case of non-payment at maturity.

Based on the lessons learned from these experiences, as well as on an altered view of the proper relationship between government and private enterprise, the present concept of the functions of the government guaranty distinguishes them clearly from those of commercial insurance. The first important difference lies in the type of risk with which each is properly concerned. Commercial insurance is designed to deal with measurable risks which can be known in advance, either a priori or on the basis of accumulated experience.³⁷ It is not equipped to handle risks which cannot be quantitatively measured either by the calculation of probabilities (because, often cumulative, they do not have the independent causes which the laws of large numbers demand) or by actuarial tables (because adequate past experience on which such tables must be based is totally lacking). Yet it is this latter type of risk, as Nurkse first pointed out more than twenty years ago, that is most injurious to international capital mobility;³⁸ measurable risks, because they are compensated for by the capital-market mechanism of the interest rate, are not risks in the true sense to the investor at all.³⁹ But the political risks faced by foreign investment today are of the incalculable variety, and it is with them that only government guaranties can cope.

Private and public insurance schemes are distinguished in purpose as well as in coverage. A private insurance company does not attempt to alter or reduce the risks it covers; its objective is simply to estimate them accurately and, on the basis of these estimates, to establish a fee schedule which will provide for the necessary payments to policyholders plus, of course, operating costs and profits. A government acting as guarantor, while it generally charges fees and uses them to set up a reserve fund for payments, recognizes that it has no actuarial basis

³⁷ Ragnar Nurkse, *Internationale Kapitalbewegungen*, Vienna, 1935, p. 24.

³⁸ *Ibid.*, p. 27.

³⁹ These observations were originally made with reference to portfolio investment. They are equally applicable to direct investment, however, if the concept of expected profit rate is substituted for that of the interest rate.

for assuming that such reserves will be adequate, and considers the reduction of the risks themselves by its very participation in them as part of its objective. For the state's role, at least where political risks are concerned, may be as much preventive as compensatory. "The primary economic function of the State guarantee lies in diminishing the probability of the loss itself."⁴⁰

Obviously, a state guaranty scheme can perform a preventive function only so long as it limits its coverage to risks which are controllable by the action of other governments; this, indeed, would seem to be a sensible definition of "political" risks. To be fully effective, furthermore, guaranties should ideally be bilateral; their preventive functions are fully operative only when the borrowing as well as the lending government becomes a party, because only then does the agent whose activities determine the incidence of loss stake its international credit standing on the avoidance of such loss. Unilateral guaranties can be effective, but they are far more likely to be in the nature of a subsidy in the long run, and to be granted only when the guarantor government has an interest in the continuation or expansion of specific foreign investments strong enough to outweigh the probably substantial cost of the guaranties to itself. But, whether unilateral or bilateral, it appears that state guaranties, long regarded as a temporary expedient, may well have become a permanent part of the international investment picture. For, as state participation in economic affairs increases, and as economic means are increasingly used for the furtherance of political ends, "Commercial risk, as it is understood under a system of unrestricted private enterprise, practically disappears, and is replaced by political risk."⁴¹

⁴⁰ Shenkman, *op. cit.*, p. 169.

⁴¹ *Ibid.*, p. 175.

II. THE DEVELOPMENT OF THE UNITED STATES INVESTMENT GUARANTY PROGRAM

Legislative History

THE United States' Investment Guaranty Program came into being in 1948 as part of the Economic Cooperation Act "to promote world peace and the general welfare, national interest, and foreign policy of the United States through economic, financial, and other measures necessary to the maintenance of conditions abroad in which free institutions may survive and consistent with the maintenance of the strength and stability of the United States."¹ Emphasizing from the first the important role private enterprise should play in the reconstruction of Europe, Congress provided that the ECA Administrator might facilitate the use of private trade channels in a number of ways, which could include:

making, under rules and regulations to be prescribed by the Administrator, guaranties to any person of investments in connection with projects approved by the Administrator and the participating country concerned as furthering the purposes of this title (including guaranties of investments of enterprises producing or distributing informational media).²

The program originally devised by the Senate Foreign Relations Committee provided for guaranties of convertibility for approved private investments up to 5 percent of the total funds appropriated for foreign aid, or \$265 million. The House version set the total limit at \$500 million, but added a maximum annual fee of 1 percent to the investor, to "limit the use of the guaranty feature to those who most need it."³ The House bill also included special provision for guaranties of investments in the production or distribution of American informational media (books, magazines, newspapers) in European Recovery Program countries, to be administered from the same funds as the industrial guaranties. The final bill, as it emerged from Conference, was the first of a long series reflecting a compromise between House enthusiasm for the program and Senate opposition to it. It empowered the Administrator to issue guaranties of convertibility of income or compensation for sale up to the amount of the paid-in in-

¹ *Economic Cooperation Act of 1948*, 62 Stat. 137.

² 62 Stat. 144-145.

³ *U.S. Code Congressional Service*, 80th Congress, 2nd session, II, p. 1387 (1948).

vestment, not to exceed \$15 million during the first year nor a total of \$300 million during the 14-year lifetime of the program.⁴ Guaranty reserve funds were not to be separately earmarked, but to come from the overall loan appropriation and, since reserves had to be set aside in an amount equal to the full face value of all guaranties issued, any money used as backing for guaranties would reduce by an equal amount the sums available for low-cost loans under the Marshall Plan.

The Guaranty Program was designed to apply to all European Recovery Program countries, but actual participation was conditional upon the negotiation of a bilateral treaty spelling out procedures to be followed in connection with the Program. This requirement had its origin partly in the idea that private investment, bolstered by the Guaranty Program, would eventually succeed the government aid program, and partly in more practical considerations of reducing the government's own risk by obtaining, in advance, agreement to definite procedures in the event that a claim should be honored. Guaranty clauses were included as Article III of the ECA Agreements with fourteen European countries, providing that:

(1) The Governments of the United States of America and [European Recovery Program signatory] will, upon the request of either Government, consult respecting projects in [that country] proposed by nationals of the United States of America and with regard to which the Government of the United States of America may appropriately make guaranties of currency transfer under Section III (b) (3) of the Economic Cooperation Act of 1948.

(2) The Government of [European Recovery Program signatory] agrees that if the Government of the United States of America makes payment in United States dollars to any person under such a guaranty, any [units of that country's currency] or credits in [units of that country's currency], assigned or transferred to the Government of the United States of America pursuant to that Section shall be recognized as property of the Government of the United States of America.⁵

The actual granting of a guaranty, however, required the implementation of this clause with a more detailed investment guaranty agree-

⁴ Investments could be in either equity or loan form. The ECA interpreted Congress' intentions to mean medium- or long-term investments, that is, with an expected lifetime of five years or more. Recently, the ICA has reduced the minimum average term of insurable loans to three years.

⁵ Economic Cooperation Administration, *First Report to Congress*, Washington, 1948, p. 82.

ment and these were negotiated with the members of the European Recovery Program gradually over the following few years.⁶

The brief legislative provisions for the Guaranty Program left many important decisions to administrative discretion. Although the development of procedures for handling the Program will be discussed separately, some of the administrative decisions are sufficiently crucial to fit most logically into the legislative history of the Program. Congress left it to the President to name the liquidating or contractual agent for the Program and his delegate, the first ECA Administrator, designated the Export-Import Bank, in conformity with announced ECA policy of using existing government agencies as far as possible, and to ensure administrative continuity after the expiration of the ECA guaranty authority.

Criteria for the eligibility of investments were also left entirely up to the determination of ECA, which interpreted Congress' intention as covering only new investments which would contribute to the objective of European recovery, and in which the *investor* was a United States citizen or a "company organized under American law and predominantly owned by American citizens."⁷ To be eligible for a guaranty, an investment had to be regarded as a substitute for a possible loan or grant, and the face amount of the guaranty would then theoretically absorb as backing appropriated funds which would otherwise have been used for grants or loans. Actually, the guaranty liabilities were to be covered by notes of an equal amount, to be issued by the Administrator and "purchased" by the Secretary of the Treasury. The outstanding guaranty authority was to be reduced by the amount of any indebtedness to the Treasury which might result from drawings against these notes, while fees and any dollars eventually acquired in the collection of a claim, after guaranty payments had been made to an investor, would be used to reduce such indebtedness to the Treasury.

Public reaction to this new form of public protection of private investment during its first year was largely one of indifference. Early in 1949, with one guaranty⁸ and twelve applications to the Program's

⁶ See Appendix C.

⁷ Mutual Security Agency, *Investment Guaranty Manual*, Washington, 1952, p. 2. In general, this means a company in which more than one-half (originally, 85 percent) of the total value of all classes of stock is owned by United States citizens. The requirement that the company be organized under United States law means that a foreign subsidiary of a United States corporation, even if wholly-owned, is not eligible to receive guaranties for its investments in other enterprises.

⁸ A complete listing of all investment guaranties issued is given in Appendix B.

credit, ECA Administrator Paul Hoffman gave this explanation for the lack of enthusiasm with which the plan had been greeted:

The primary reason for the low volume of applications appears to be the uncertain conditions in Western Europe, which are not attractive to new dollar investments even with a guaranty of convertibility. A secondary factor affecting the magnitude of applications to date is the relatively short period since the inauguration of the investment guaranty program.⁹

The fact that the Program's total for the year was "far below anticipations"¹⁰ was a matter of considerable concern to the Administration and to its supporters in Congress, particularly the House. The State Department seemed to regard the Program as ". . . perhaps the most effective possibility for altering the prospects now facing U.S. private investors in foreign areas."¹¹ The same spokesman felt that, if the Program were broadened to include convertibility of earnings in excess of the amount of paid-in capital, and to insure as well against expropriation and war, "Such a guaranty would remove all present risks peculiar to foreign investment and would thus leave the U.S. investor abroad to face only those conditions which would confront him in domestic enterprises."¹²

Similar suggestions for broadening the Program were made during the 1949 hearings by a spokesman for the American Bar Association, which had been one of the strongest original supporters of the guaranty idea: (1) that there be a \$1 billion guaranty authorization *separate* from the ECA loan authorization; (2) that the convertibility of earnings and profits, as well as of the capital originally invested, be

⁹ Economic Cooperation Administration, *A Report on Recovery Progress and United States Aid*, Washington, 1949, p. 112.

¹⁰ Economic Cooperation Administration, *Fourth Report to Congress*, Washington, 1949, p. 56.

¹¹ Wilfred Malenbaum, "America's Role in Economic Development Abroad," *Department of State Bulletin*, March 27, 1949, p. 374.

¹² *Ibid.*, p. 375. This view, however, was disputed by other members of the Administration in the 1949 hearings before the House Foreign Affairs Committee. Secretary of the Treasury Snyder said that "I doubt seriously whether any extensions of the guaranty provisions would be very effective in actually attracting more private investment to Europe." Averell Harriman, then ECA's Special Representative in Europe, felt that if guaranties were broadened to cover all risks they would of course attract investment, but that they would also be risking taxpayers' money to usurp the functions of private entrepreneurs. "The advantage of private capital is that it will take risks. . . . The climate has not been proper to attract private capital in any volume and for that reason the capital has not come forward." U.S. 81st Congress, 1st Session, House Committee on Foreign Affairs, *Extension of the European Recovery Program, Hearings*, Washington, 1949, pp. 377 and 54, respectively.

guaranteed; (3) that risk coverage be extended to: (a) seizure or confiscation, (b) destruction through riot or revolution, (c) "forced abandonment by the investor as a result of discriminatory policies of the foreign government which so seriously impair his position . . . that the further transaction of the investor's intended business is rendered impracticable and unprofitable."¹³

The ECA itself opposed such changes, saying that it was "very dubious whether even so drastic a broadening of the guaranty coverage . . . would under present conditions result in an appreciably greater flow of private American capital to the ERP countries."¹⁴ The House nevertheless adopted all the suggested changes, with the exception of the \$1 billion authorization, which it reduced to \$300 million. The Senate, however, would not consent to such a broadening of coverage, and convertibility remained the only insurable risk in the 1949 legislation.

The 1949 amendment to the Economic Cooperation Act of 1948 did, however, reflect a broadening and liberalization of policy in a number of ways. The definition of eligible enterprises was broadened to include the "expansion, modernization, or development of existing enterprises," as well as the "furnishing of capital goods items and related services, for use in connection with projects approved by the Administrator," if not to be paid for entirely within the same fiscal year.¹⁵ These last are called forward contracting guaranties. Coverage was also extended, within limits, to earnings and profits on tangible investments, as well as to profits in techniques or processes, if the latter were based on a tangible property investment. Specific limitations on earnings guaranties were not established by Congress but were left up to the ECA, which set an overall limitation of 175 percent of the original capital invested, with more detailed restrictions applying to the first six years of the life of an investment.¹⁶

The total guaranty authorization was reduced to \$150 million by the 1949 legislation¹⁷ (of which less than \$3 million had been used when the bill was passed), but it was now separate from the ECA loan authorization, thus eliminating the "competitive" disadvantage from which the Program had suffered as long as guaranties issued reduced

¹³ Statement by Norman M. Littell, *ibid.*, p. 645.

¹⁴ *Ibid.*, p. 843.

¹⁵ *An Act to Amend the Economic Cooperation Act of 1948*, 63 Stat. 51 (1949).

¹⁶ Convertibility guaranties were limited to 100 percent of the original capital invested during the first year of operation, and could then increase by 15 percent annually until the total coverage of 175 percent was reached.

¹⁷ \$10 million of this was earmarked for informational media guaranties.

by their face amount the sums available for loans. Finally, the legal position of the United States with respect to claims was clarified in this bill, which provided that, after payment of a claim, any currency or credits forthcoming from the investment shall become the property of the U.S. Government *and* that the U.S. Government shall be subrogated to any right, title, or claim in connection with it.¹⁸

At the time of the passage of this legislation the performance of the Program itself was deeply disappointing to the originators, who had expected it to become a strong incentive to foreign investment overseas. The President, in his message to Congress, attributed the lack of public response to the Program to "the relative lack of interest of American capital in European investments."¹⁹ But its supporters in the House, bitter at the Senate's rejection of their plans for broadening the Program, laid the failure to the legislation itself: "The policy that will attract American private enterprise more fully and directly into the great task of solving the economic problems of Europe remains a task that must properly and adequately be dealt with in future legislation."²⁰

Shortly after the passage of the ECA legislation, President Truman, in discussing the implementation of the Point Four Program in his message to Congress of June 24, 1949, recommended that the Guaranty Program be expanded to include underdeveloped areas and that it be administered entirely by the Export-Import Bank:

Since the development of underdeveloped economic areas is of major importance in our foreign policy, it is appropriate to use the resources of the Government to accelerate private efforts toward that end. I recommend, therefore, that the Export-Import Bank be authorized to guarantee United States private capital, invested in productive enterprises abroad which contribute to economic development in underdeveloped areas, against the risks peculiar to those investments.²¹

In August the House Banking and Currency Committee held hearings on this proposal. Throughout the testimony no reference was ever

¹⁸ *An Act to Amend the Economic Cooperation Act of 1948*, 63 Stat. 51-52 (1949).

¹⁹ Economic Cooperation Administration, *Fifth Report to Congress*, Washington, 1949, pp. 37-38.

²⁰ *U.S. Code Congressional Service*, 81st Congress, 1st session, II, p. 1211 (1949). Chief supporters of the guaranty program from its inception were Representatives Judd of Minnesota, Richards of South Carolina, and Vorys of Ohio. The Senate opposition was consistently led by the late Senator George of Georgia.

²¹ Department of State, *Point Four*, *op.cit.*, pp. 101-102.

made to the ECA Program then in operation, although a very similar plan, with the addition of a guaranty against expropriation, was being considered.²² The House Foreign Affairs Committee, then and several times in the following decade, was able to make its opposition to such a transfer of authority effective, and industrial guaranties remained the responsibility of the ECA.

The House Foreign Affairs Committee continued its efforts to make the Guaranty Program an effective instrument in 1950, in the face of continued apathy and considerable opposition, not only from segments of the business community but from within the ECA itself; spokesmen for the ECA stated publicly opposition to broadened guaranty coverage and the conviction that the Program should be transferred to the Export-Import Bank.²³ The Senate once again defeated in conference the House's efforts to add war and revolution guaranty clauses and to increase the total guaranty authorization to \$300 million. The House Committee was successful, however, in extending guaranty coverage to loss through expropriation or confiscation, and in increasing the authority from \$150 million to \$200 million. Furthermore, the repatriation of royalties paid for the contribution of patents, processes or techniques to an enterprise in a foreign country, whether accompanied by a tangible cash investment or not, was now made eligible for guaranty coverage.²⁴ And finally, the importance placed by Congress on the successful operation of the Program was incorporated into the legislation itself, at the insistence of the House Committee, in a phrase stating ". . . the intent of Congress that the guaranty herein authorized should be used to the maximum practicable extent and so administered as to increase the participation of private enterprise in achieving the purposes of this Act. . . ."²⁵

Just as these changes were being made, the development of the Investment Guaranty Program began to look hopeful for the first time since its inception. The issuance of contracts totalling nearly \$20 million, including the largest one yet issued,²⁶ gave new hope that the

²² U.S. 81st Congress, 1st Session, House Committee on Banking and Currency, *Export-Import Bank Loan Guaranty Authority, Hearings*, Washington, 1949.

²³ U.S. 81st Congress, 2nd Session, House Committee on Foreign Affairs, *To Amend the Economic Cooperation Act of 1948, as Amended, Hearings*, Washington, 1950, pp. 19 and 58.

²⁴ *The Economic Cooperation Act of 1950*, 64 Stat. 198-199 (1950); and *U.S. Code Congressional Service*, 81st Congress, 2nd Session, II, pp. 2441-2463 (1950).

²⁵ *The Economic Cooperation Act of 1950*, 64 Stat. 200.

²⁶ Standard Oil of New Jersey bought a major interest in the new Italian petroleum refinery, STANIC. A convertibility guaranty was issued for \$14,487,500, \$12,000,000 for the initial capital investment and the remainder for the earnings increment.

guaranties might yet become a force in encouraging American investment abroad. Later in that year, the important Gray report to the President recommended that the Program be broadened as a worthwhile experiment.²⁷

In the 1951 House Committee hearings ECA Administrator William C. Foster expressed both the hopes and the doubts of those in charge of the Guaranty Program:

... the thing that we are trying to do [is to] ... create conditions in these underdeveloped countries, particularly, that will attract American private enterprise and allow us to reduce the Government load in building up the countries. But I am afraid that convertibility and expropriation guaranties are not sufficient in themselves so to do.²⁸

American involvement in the Korean hostilities had completely shifted the emphasis of the foreign aid program by 1951. Military assistance, not economic recovery, was now its primary objective, and the focus was no longer on Europe alone, but the entire free world. With the expiration of the ECA and the Administration's failure to muster sufficient support for transferring investment guaranties to the Export-Import Bank, the Program seemed doomed. But, during hearings on the new Mutual Security Act, several members of Congress favored widening the geographical coverage of the guaranties and, despite the Administration's lack of enthusiasm, they were authorized under the Mutual Security Act of 1951 "in any area in which assistance is authorized by this Act."²⁹

Administration policy called for the avoidance of "strings" on foreign aid, but Congress nevertheless attached to the Mutual Security Act a number of criteria for aid, including guaranties, stated in such broad terms as the strengthening of the security of the United States, the promotion of world peace, and the elimination of the causes of international tension.³⁰ Most controversial of all was the Benton Amendment, which made the extension of aid, including the Guaranty Program, conditional upon agreement to certain general actions to foster free private enterprise. The provision, as adopted, stated that the Act should be administered so as "to eliminate the barriers to, and

²⁷ Gordon Gray, *Report to the President on Foreign Economic Policies*, Washington, 1950, p. 62.

²⁸ U.S. 82nd Congress, 1st Session, House Committee on Foreign Affairs, *The Mutual Security Program, Hearings*, Washington, 1951, p. 195.

²⁹ *Mutual Security Act of 1951*, 65 Stat. 384.

³⁰ *Ibid.*, p. 381.

provide the incentives for, a steadily increasing participation of free private enterprise in developing the resources of foreign countries consistent with the policies of this Act. . . ."³¹

The requirement of the negotiation of a bilateral agreement before the institution of the Guaranty Program remained. Indeed, the entire Program was taken over intact and unchanged from ECA, except for the geographical extension and the new eligibility criteria, implementing the broad instructions quoted above, which were left to the administrative discretion of officials of the Mutual Security Agency's Facilities and Equipment Division.

The Investment Guaranty Program which was turned over to the Mutual Security Agency on December 31, 1951, consisted of 37 contracts covering investments and earnings totalling \$33.5 million (\$31.7 for convertibility, \$1.8 for expropriation). The Paley Commission's report to the President, issued in June 1952, gave its guarded approval:

. . . the present guaranties against inconvertibility and expropriation should be viewed as experimental pending longer and geographically more extended experience.³²

But the opposition spoke with a stronger voice; representative of a large segment of business opinion was the view that:

. . . there is now considerable agreement that this [Guaranty Program] has done little to stimulate overseas investment and it has probably lessened the feeling of responsibility which other governments should have towards U.S. investors.³³

The performance of the Program continued to disappoint its supporters and, despite the fact that testimony during both the Senate and the House hearings stressed the need for extensions of the risk coverage and time limits of the program, the Senate once again thwarted the House in its efforts to obtain coverage against revolution and war, and the relevant legislation remained unchanged in 1952. Congress did, however, register its dissatisfaction with the administration of the Program: "The Committee is not satisfied that the Director for Mutual Security has exerted all the reasonable effort possible

³¹ *Ibid.*, p. 382.

³² President's Materials Policy Commission, *Resources for Freedom*, Washington, 1952, I, p. 69.

³³ Walter L. Lingle, Jr. (Vice-President, Procter and Gamble), "A Corporation's Approach to Overseas Investment, *Report of the 40th National Foreign Trade Convention*, New York, 1953, p. 160.

to implement these provisions," and directed that "the Mutual Security Agency, in cooperation with private business groups and appropriate Government agencies, must broaden its guaranty criteria so as to facilitate the participation of private capital . . . [and] must also conduct a thorough study of impediments and obstacles to private investment abroad, followed by recommendations to the Director for Mutual Security."³⁴

The House version of the Mutual Security Act of 1953, heeding the recommendation of the *Report* of the Subcommittee on Foreign Economic Policy that the Program be broadened in area, time limit, and types of risk covered, extended the terms of guaranty contracts to twenty years and, once again, extended risk coverage to war, revolution, and civil disorder. Senate opposition persisted, however, and the final version of the bill, although it did extend the term of guaranties from April 3, 1962 to "twenty years from the date of issuance," did not include the broadened risk coverage desired by the House. It did, however, extend the geographical scope of the program to its ultimate limits, providing that guaranties may be made "in any country with which the United States has agreed to institute the guaranty program," whether or not it is eligible for aid under the Mutual Security Act. The issuing authority was also extended to mid-1957.³⁵

With the termination, on August 1, 1953, of the operations of the Mutual Security Agency, the Investment Guaranty Program was transferred to the jurisdiction of a new agency, the Foreign Operations Administration. At the time of the transfer it consisted of 53 contracts for convertibility guaranties of \$39.6 million and expropriation guaranties of \$1.6 million, and applications totalling \$69.2 million were pending. Bilateral agreements regarding convertibility guaranties had been signed with 17 countries, all but two of which had also signed similar documents covering expropriation guaranties. But only four of the signatories were outside Europe,³⁶ and no guaranty had yet been issued for an investment in a non-European area.

The 1954 Congressional hearings were held against the background of the President's public endorsement of the findings of the Randall Commission report. This group regarded the Program favorably because, in their opinion, it removed an important obstacle to the initial consideration of private investment abroad and because, unlike a

³⁴ *U.S. Code Congressional and Administrative News*, 82nd Congress, 2nd Session, II, p. 1598 (1952).

³⁵ *Mutual Security Act of 1953*, 67 Stat. 158 and 161; and *U.S. Code Congressional and Administrative News*, 83rd Congress, 1st Session, II, pp. 1931 and 1934 (1953).

³⁶ China, Haiti, Israel and the Philippines.

public loan, it required the private investor and not a government agency to judge the commercial risk attached to a proposed undertaking. After warning against the tendency of the Program to conceal the extent of the government's stake in a project, and the size of the potential risk involved, the report concluded that, although the experimental program had not yet proved itself, it should be given a longer trial, broadened by a war risk guaranty.³⁷

Despite the pressure of the House Foreign Affairs Committee for the introduction of war and revolution guaranties in the 1954 Mutual Security Act legislation, the opposition of the Senate Foreign Relations Committee succeeded once again in preventing this extension of the Program. The legislation relating to investment guaranties remained unchanged in 1954, although consolidated for the first time with all other provisions relating to private investment under section 413 of the Mutual Security Act.

Within the existing legislative framework, the Investment Guaranties Staff of the Foreign Operations Administration introduced a number of important administrative changes intended to increase the incentive effect of the Program: (1) Fees, which had ranged as high as 1 percent for convertibility and 4 percent for expropriation, were lowered to one-half of 1 percent. (2) Convertibility insurance, previously limited to 175 percent of the original investment was raised to a maximum of 200 percent. (3) The eligibility requirement that 85 percent of the stock of an investor company be owned by United States citizens was reduced to 51 percent. (4) Conversion rights would no longer be reduced by the amount of earnings withdrawn without resort to the guaranty.³⁸

The Export-Import Bank had been authorized, by a 1953 amendment to the Export-Import Bank Act of 1945, to provide insurance up to \$100 million against losses, due not only to ordinary commercial risks, but to war, civil war, rebellion, civil strife, expropriation, or confiscation.³⁹ The aim of this insurance was to facilitate the granting

³⁷ Commission on Foreign Economic Policy, *Report to the President and the Congress*, Washington, 1954, pp. 22-23. This view was not unanimous, however. The view of the dissenters (Senators Byrd, George, Hickenlooper, Milliken and Representatives Reed and Simpson) was expressed by Senator Milliken: "It is my view that instead of encouraging foreign countries to create a healthy climate for foreign investment, such measures will stimulate an attitude—'We will continue to do as we please; the American investor will be made whole from the results of our actions and the American Government will foot the bill and will have nothing more than an uncollectible political claim against us.'" (p. 79).

³⁸ *Report to Congress on the Mutual Security Program*, for the six months ended December 31, 1954, Washington, 1955, pp. 62-63.

³⁹ *U.S. Code Congressional and Administrative News*, 83rd Congress, 1st Session, I, pp. 37-38 (1953).

of export credits, however, and it was made clear during the 1954 Congressional hearings on proposed Mutual Security legislation that the Export-Import Bank had "interpreted their authority to preclude guarantee of equity investments against any particular risk," and would guaranty only loans or private credits.⁴⁰ The encouragement of foreign investment by public guaranty remained the prime responsibility of the Foreign Operations Administration's Investment Guaranty Program.

When the Foreign Operations Administration expired on June 30, 1955, it was obvious that its efforts had had an effect. During its two years (less one month) of operation the total value of both contracts issued and applications pending had more than doubled; on April 1 of that year they stood at \$88.8 million and \$152.5 million respectively. But some of the Congressional originators of the Program were dissatisfied; they felt that the legislative mandate to use the Program to the maximum practicable extent and to administer it under broad criteria had not been followed:

The Committee is not satisfied that 'broad criteria' have been applied by the executive branch to the guaranty provisions nor that the participation of private enterprise is being facilitated or increased to the maximum extent practicable . . . the interpretation placed by the executive branch on the type of investment covered has been unduly narrow, contrary to the intent of Congress, [which was] . . . that the executive branch exercise the utmost imagination and effort to expand the investment guaranty program. . . .⁴¹

The Foreign Affairs Committee was also dissatisfied with its Senate colleagues who, led by Senator Walter F. George of Georgia, had year after year blocked efforts to increase the types of risk covered. Senator George's chief objection, as phrased by a Congressman who had participated in the long wrangle on the side of expansion of the Program, was apparently that:

If you have a big American company over there that has a big investment and is losing money on it, some companies are ruthless enough that they will organize an insurrection so they can get their money back through the guaranty.⁴²

⁴⁰ U.S. 83rd Congress, 2nd Session, House Committee on Foreign Affairs, *Mutual Security Act of 1954, Hearings*, 1954, p. 1037.

⁴¹ U.S. Code Congressional and Administrative News, 84th Congress, 1st Session, II, p. 2369 (1954).

⁴² Representative Walter H. Judd, U.S. 85th Congress, 1st Session, House Com-

Whether all the opponents of the Program's extension based their opposition on such an extreme view of the operation of perverse incentives is uncertain, but, in any case, the quarrel had by now reached such dimensions that one particularly outspoken originator and supporter of the Program, Congressman Vorys of Ohio, complained in a public hearing that "anything that will make this guaranty effective will run into trouble in the Senate Foreign Relations Committee.⁴³ We have marched up the Hill and down, year after year . . . they are dead against making this guaranty work."⁴⁴

Meanwhile, the administration of the Guaranty Program was once again changing hands. The foreign assistance and mutual security programs, administered by independent agencies for the past seven years, were now to be absorbed into existing government agencies. On June 30, 1955, the Mutual Security Program was divided, the military aspects to be administered by the Department of Defense and the economic by the Department of State. The Investment Guaranties Staff came under the direction of the International Cooperation Administration, a newly established semi-autonomous agency within the Department of State.

The Mutual Security Act of 1956 brought, at last, a number of important legislative changes to increase the effectiveness of the Program:⁴⁵

(1) The authority to issue guaranties was extended from June 30, 1957 to June 30, 1967. This was expected to facilitate the negotiation of guaranty agreements with non-participant countries, who in the

mittee on Foreign Affairs, *Mutual Security Act of 1957, Hearings*, Washington, 1957, p. 1271. Steuart Pittman who, as Assistant General Counsel of ECA, was closely concerned with the Program's development, suggests that Senator George also regarded the program a possible source of discrimination against domestic investment. (From a letter dated November 19, 1958.)

⁴³ It was in 1955, too, that the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee became concerned with the problem of applications for guaranties covering royalty payments for patents, processes, or techniques where the investment agreements contained restrictive business trade practices. Testimony on specific cases by Program administrators indicated that, in cases where investors refused to modify the restrictive provisions, guaranty contracts were not issued. U.S. 84th Congress, 1st Session, Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, *A Study of the Antitrust Laws, Hearings*, Washington, 1956, pp. 1825-1838. Such reviews and adjustments were always on an informal basis, however, and in more recent years have no longer been conducted at all, according to officers of the Guaranties Division.

⁴⁴ U.S. 84th Congress, 1st Session, House Committee on Foreign Affairs, *Mutual Security Act of 1955, Hearings*, Washington, 1955, pp. 707-708.

⁴⁵ *Mutual Security Act of 1956*, 70 Stat. 558-559; and *U.S. Code Congressional and Administrative News*, 84th Congress, 2nd Session, II, pp. 3235-3244.

past had often cited the imminent expiration of the Program as the reason for their lack of interest in negotiating an agreement.

(2) The limitation on the total face value of guaranties was increased from \$200 million to \$500 million and, for the first time, the media guaranty authorization, covering investments in the production or distribution abroad of American informational media, was no longer included in this sum.⁴⁶

(3) The amount of the issuing authority might now be increased by the dollars received by the government for any assets or foreign currency of an investor whose claim it had paid. Formerly the issuing authority could be increased only by the amounts of guaranties reduced, expired, or cancelled.

(4) All guaranties issued after June 30, 1956 were put on a fractional reserve basis. Previous legislation had required that the total face amount of the guaranties be backed by the Administrator's notes purchased by the Treasury; now, in accordance with accepted banking and insurance practice, only 25 percent need be held in notes and fees against the face value of the guaranties.⁴⁷

(5) Risk coverage for losses "by reason of war" was at last provided for; the House Committee had finally won at least part of its battle.

(6) The specific House provision that the Program be administered by the ICA was not included in the final version, but a Conference compromise did permit the inclusion of a provision that it be under "the Agency primarily responsible for administering nonmilitary assistance under this Act." Behind this phrase lay yet another altercation, revealed in testimony in the House hearings, over the location

⁴⁶ Here, again, the House Committee had been the leading force in raising the Administration's request from \$300 to \$500 million. The Committee's aim was apparently to reduce the taxpayers' burden and encourage foreign countries to rely more on private investment by increasing the guaranty authority and reducing the grant and loan authorities.

⁴⁷ The borrowing authority based on notes was \$199.1 million, while fees collected added another \$1.5 million.

The rationale underlying the provision for fractional reserves was expressed in the sentence in the *Mutual Security Act of 1956* which stated that: "All guaranties issued after June 30, 1956 . . . shall be considered . . . as obligations only to the extent of the probable ultimate net cost to the Government of the United States of such guaranties." (70 Stat. 559.) The reasons offered for regarding such reserves as sufficient were briefly, as follows: (1) The wide geographical dispersion of guarantied projects; (2) the United States takes over the investor's currency or claims after making payment under a guaranty; it is therefore not expected that such payments will be total losses; (3) guarantied investments are "double counted" when an investor obtains both convertibility and expropriation guaranties; it is unlikely that both guaranties would ever be invoked to their face amounts, yet they are both charged in full to the guaranty authority.

of the Program.⁴⁸ The Administration, following a recommendation by the Hoover Commission, wanted to transfer the Program entirely to the Export-Import Bank.⁴⁹ The House Committee, which firmly opposed the administration of the Program by an agency committed to cautious, "sound banking" principles, was once again successful in blocking the change.

No significant changes were made in the legislation pertaining to the Investment Guaranty Program during 1957 or 1958, although the wording of the relevant section of the Mutual Security Act of 1958 was changed very slightly in order to give the President the authority to shift the Program from the ICA to some other agency if such a change should seem desirable at some future time.⁵⁰

In the House draft of the Mutual Security Act of 1959⁵¹ the war risk guaranty was once again broadened to cover "loss by reason of revolution, insurrection and civil disturbance in connection therewith." Despite strong recommendations in two important recent reports on the world economic situation, those of the Boeschenstein Committee on World Economic Practices and of the Straus group for the Department of State, that such expanded coverage be provided, and even though there is ample evidence that the war risk guaranty as presently limited has not appealed to American investors (not a single war risk guaranty contract had been issued or seriously sought as of June 1959), the broader provision was once again deleted in Conference. The deletion was "without prejudice" to its proposal in the 1960 legislation, when it will undoubtedly be raised again. (A brief legislative and administrative history of the Program is given in Table III.)

In view of the fact that, by mid-1959, nearly \$450 million in guaranties had been issued and applications pending totalled nearly \$1 billion, an increase in the issuing authority from \$500 million to \$1 billion was requested and received in the 1959 legislation. (For the fiscal position of the Investment Guaranty Program as of March 31, 1959, see Table IV.) Finally, a Senate amendment adopted in the final bill effectively limits the Program after January 1, 1960 to the protection of investments in projects which, in the judgment of the Director of the ICA, are expected to be instrumental in "the development of

⁴⁸ U.S. 84th Congress, 2nd Session, House Committee on Foreign Affairs, *Mutual Security Act of 1956, Hearings*, Washington, pp. 691-713.

⁴⁹ Commission on Organization of the Executive Branch of the Government, *Overseas Economic Operations*, Washington, 1955, pp. 388-389.

⁵⁰ Section 413 (b) (4) of the *Mutual Security Act of 1958*.

⁵¹ Legislation pertaining to the ICA Investment Guaranty Program as of June 30, 1959 is reproduced in full in Appendix A.

the economic resources and productive capacities of economically underdeveloped areas.⁵² The intended breadth of this limitation cannot be precisely ascertained from the wording of the legislation itself, but guaranty officers feel that, while under the new law the term "underdeveloped" will probably be interpreted broadly enough to permit the continued issuance of guaranty contracts in a number of countries which have not here been included in that term (e.g., Spain and Japan), "future investments in the developed areas of Western Europe, at least, will be ineligible."⁵³

Some clue as to Congress' intent in establishing this geographical restriction is offered by the following comment in the Foreign Relations Committee *Report* on the 1959 bill:⁵⁴

The committee was disturbed . . . by the fact that, of the \$400 million in guarantees issued to date, \$321 million have been to cover investments in the countries of Western Europe. . . . The program was originally established to encourage private investment in Western Europe, but that was at a time when Europe was prostrate from the war and was receiving massive Government economic assistance. This condition no longer exists. The focus of efforts to encourage private investment is now on underdeveloped countries. These efforts should certainly be pursued, but there is no reason to give this further encouragement to private investment in Europe.

Apparently Congress feels that the "intermediary period," when private investment is possible only with special government support, has passed in Europe, and that governmental efforts to spur the movement of American capital abroad should be directed solely toward the world's economically backward nations; that the Program should concentrate on the latter areas because its mission has been accomplished in the former.

Changes in Administrative Procedure

While they could not be fully covered in the outline of legislative development without destroying the latter's continuity, administrative changes and decisions have played a crucial role in determining

⁵² *Mutual Security Act of 1959* (P.L. 86-108, approved July 24, 1959). Section 413 (b) (4) (A).

⁵³ Letter from Thomas P. Doughty, Associate Chief, Investment Guaranties Division, July 21, 1959.

⁵⁴ U.S. 86th Congress, *The Mutual Security Act of 1959*, Senate Report No. 412, Washington, June 22, 1959, p. 31.

TABLE III
Legislative and Administrative Milestones in the Development of the Investment Guaranty Program

<i>Year</i>	<i>Authority</i>	<i>Adminis- trating Agency</i>	<i>Types of Risk Covered</i>	<i>Maximum Face Value of Guaranty</i>	<i>Types of Investment Eligible</i>	<i>Amount of Author- ization</i>	<i>Area</i>	<i>Other</i>
1948	EC Act of 1948	ECA	Convertibility blockage.	100% of paid-in investment.	New, tangible, equity or loan investment. 85% of all classes of stock of <i>investor</i> must be owned by U.S. citizens.	\$300 mill.	ERP coun-tries.	
1949	EC Act of 1948 amended	ECA	"	Earnings & profits guarantied to 175% of paid-in capital.	The above, plus ex-pansion & moderniza-tion; capital goods & related services if not paid for within same year; royalties for tech-niques & processes if ac-companied by a tangible investment.	\$150 mill.	"	Guaranty authority separated from loan authority.
1950	EC Act of 1950	ECA	Above, plus Expropria-tion	Convertibility: same as above. Expropriation: paid-in investment plus "reasonably expected" future earnings.	All the above, plus royalties as above with or without an accom-panying tangible in-vestment.	\$200 mill.	"	
1951	MS Act of 1951	ECA	"	"	"	"	All areas in which MSA as-sistance is authorized.	
1952	MS Act of 1952	MSA	"	"	"	"	"	

Year	Authority	Adminis- trating Agency	Types of Risk Covered	Maximum Face Value of Guaranty	Types of Investment Eligible	Amount of Author- ization	Area	Other
1953	MS Act of 1953	MSA- FOA	"	"	"	"	Any coun- try with which U.S. has signed agreement to institute the pro- gram.	Issuing au- thority ex- tended to mid-1957. Maximum length of guaranties extended from 4/3/ 62 to 20 yrs. from date of issuance.
1954	MS Act of 1954	FOA	"	Convertibility: 200% of paid-in in- vestment. Expro- priation: same as above.	Same as above, but U.S. stock ownership require- ment in <i>investor</i> reduced from 85% to 51%.	"	"	
1955	MS Act of 1955	FOA- ICA	"	"	"	"	"	
1956	MS Act of 1956	ICA	Above, plus direct war loss.	Conv. & Exprop.: same as above. War loss: 90% of physi- cal property value.	"	\$500 mill. (informa- tional media no longer in- cluded.)	"	Issuing au- thority ex- tended to 6/30/67. All future guar- anties on frac- tional reserve basis.
1957	MS Act of 1957	ICA	"	"	"	"	"	
1958	MS Act of 1958	ICA	"	"	"	"	"	
1959	MS Act of 1959	ICA	"	"	"	\$1 billion	Underde- veloped areas only.	

TABLE IV
Fiscal Position of the Investment Guaranty Program
As of March 31, 1959

	<i>Millions</i>
Present issuing authority	\$500.0
Less investment guaranties issued and outstanding (after taking into account deductions, cancellations, and reductions of risks. \$413.5 million in guaranties have been written)	-337.9
Issuing authority remaining	162.1
Applications pending	1,000.0+
Reserve sources:	
Notes (borrowing authority)	\$199.1
Fee income through March 31, 1959	3.8
Total reserve sources	202.9
Less amounts obligated:	
For pre-July 1, 1956 contracts (100% reserve)	\$52.1
For contracts on fractional reserve	71.4
Total obligated	-123.5
Amount remaining for obligation	79.4
Contracts which may be issued on 25% reserve basis	317.6

Source: International Cooperation Administration, Investment Guaranties Division.

the nature and course of the Program's growth since its inception, when one officer, working under the Assistant to the ECA Administrator, was alone responsible for the shaping of the Investment Guaranty Program within the broad outlines sketched by the Economic Cooperation Act of 1948. His task was essentially twofold: the development of eligibility criteria and procedures for obtaining a guaranty, and the negotiation with countries in the European Recovery Program of the bilateral treaties which were a prerequisite to the processing of guaranty applications.

Regulations for applying for guaranties were issued by the Administrator in July 1948 and procedures for processing applications were formulated during the same quarter, although their use had to await the signing of bilateral treaties. A prospective investor, in addition to securing the approval of the host country for his prospective investment, was required to submit to the Guaranty Administrator an exhaustive description of his plans, including engineering and economic surveys, balance sheets and income statements, and a statement showing the expected effect of the investment on the foreign exchange position of the host nation.⁵⁵ After a preliminary review in Washington, an application was forwarded to the Office of the ECA's Special

⁵⁵ Economic Cooperation Administration, *First Report to Congress*, Washington, 1948, p. 11.

Representative in Paris and to its mission in the country concerned, and their recommendations were reviewed in Washington before a final decision was made.⁵⁶ Later in the year, the criteria followed in deciding whether or not to grant a guaranty were outlined in somewhat more detail: applications were examined by the Administrator in the light of specific country programs authorized by the ECA; among the major considerations were the country's need for the proposed products, the amount of dollar imports saved, the creation of new exports, and the soundness of the investment from the point of view of European recovery as a whole.⁵⁷

Inevitably, in view of the lack of precedents for such a guaranty scheme, the early administration was uncertain, overcautious and therefore too slow and complicated to attract the maximum interest from potential users. The first year or more of operation was, in any case, taken up with the development of general procedures and the negotiation and completion of bilateral treaties. A few guaranties were issued, but the Program's lone administrator did not have the leisure to seek out possible users, and processing of applications was slow, requiring a minimum of six months, and often a year or more.

In 1950 the Industrial Guaranty Branch was organized within the ECA's Industry Division, with a view to making the Program's administration more efficient and therefore more effective by sharing the duties among several people. Besides issuing five new contracts, the Branch expended considerable effort in working out procedures and contractual forms for guaranties of licensing agreements, authorized in the 1950 legislation. The first such contract, for \$140,000 in royalties over the life of the contract, was issued to the Gardner-Denver Company for agreements in Germany, where it had no cash investment whatsoever.⁵⁸

The Branch staff also worked with an Advisory Committee, composed of men "prominent in the fields of banking, industry, accounting, law and insurance,"⁵⁹ on the development of the newly authorized expropriation guaranty, which was announced in April 1951. The first expropriation guaranty was issued to the Otis Elevator Company

⁵⁶ Economic Cooperation Administration, *Second Report to Congress*, Washington, 1948, pp. 57-58.

⁵⁷ Economic Cooperation Administration, *Third Report to Congress*, Washington, 1949, pp. 47-48.

⁵⁸ Economic Cooperation Administration, *Twelfth Report to Congress*, Washington, 1952, p. 54.

⁵⁹ *Ibid.*, p. 55. The Committee's report, issued in January 1951, also expressed the opinion that a war risk guaranty would have to be added if the Program were to have a significant incentive effect.

in the second quarter of 1951 for a \$225,000 investment of cash and technical assistance in Flohr-Otis Betrieb G.m.b.h., in the Western sector of Berlin.⁶⁰ In November the first contract was written under a modified convertibility policy, which simplified the method for determining the exchange rate at which conversions were to be made under the contract, and which protected the investor against any deterioration in his relative position (under multiple exchange rate systems) after the contract was signed. It also limited the United States to a contingent, not a firm, liability in case of loss.

On December 31, 1951, with the expiration of the ECA, the Industrial Guaranty Branch was transferred to the Facilities and Equipment Division of the new Mutual Security Agency. It was soon moved again, however, and during most of the two-year lifetime of the Mutual Security Agency, was under its Industry Division. In June of 1952, in recognition of the completely different objectives of the industrial and informational media guaranties, the two programs were separated and the latter turned over to the State Department.

During the same year the Guaranty Branch intensified its efforts to publicize the Program. In June it distributed information, including the *Investment Guaranty Manual*, describing the Program's coverage and application procedures in detail, to 3000 banks, investment concerns, industrial firms, and commercial associations. This release brought considerable publicity and increased interest in the Program, including over 100 inquiries about the possibility of obtaining guaranties for investments in Latin America.

When, with the expiration of the Mutual Security Agency on August 1, 1953, the administration of the Investment Guaranty Program was transferred to the new Foreign Operations Administration, the Guaranty Staff was placed, as the Investment Guaranties Staff, in the Office of Trade, Investment and Monetary Affairs. Through diplomatic establishments and Operations Missions abroad, the new Staff made intensified efforts to inform other countries about the Guaranty Program and thus increase the number of countries participating in it. At home, its efforts to increase business interest were indirectly aided by the Contact Clearing House Service of the Foreign Operations Administration, which helped to arrange contacts between American and foreign firms interested in exploring specific investment possibilities.

In addition to important policy changes, discussed above in the

⁶⁰ Economic Cooperation Administration, *Thirteenth Report to Congress*, Washington, 1951, p. 56.

legislative history, the Foreign Operations Administration made a number of operational changes designed to shorten processing time and simplify the procedure of obtaining a guaranty, on the ground that if guaranties were to make more than a marginal contribution, they must be more readily available and less complex in coverage.⁶¹ The most important of these improvements was that a single standard was thenceforth to apply to investment proposals for Europe and underdeveloped areas. The applicant would no longer need to prove that his proposal would contribute directly to the specific objectives of the Mutual Security Program in a particular country; indication of its value to the development of production or trade or to mutual defense in general would be sufficient. This and a number of other program changes were incorporated in a completely revised *Investment Insurance Manual*, issued by the Foreign Operations Administration in October 1954. It is significant of the simplifications made, particularly in the information required in the initial application, that the new manual numbered only 29 pages to the old one's 42.

Officers of the Guaranties Staff spent much of the first six months under the ICA completing rather difficult negotiations for the first bilateral guaranty agreements with Latin American countries, eight of which were signed before the end of 1955. With the authorization of war risk guaranties in June 1956, the manual had to be rewritten once again to incorporate this and other changes which had been made since 1954. It appeared in September 1957, as the *Investment Guaranty Handbook*. Meanwhile, bilateral agreements covering war risk guaranties had to be worked out; these were somewhat complicated because they, unlike those relating to convertibility and expropriation, provided for special treatment of guaranteed investments by foreign governments. Specifically, the host governments agreed to either national or most-favored-nation treatment for guaranteed enterprises in the event of war.

Delays in the establishment of administrative procedures and in the negotiation of bilateral agreements prevented the consideration of war risk guaranties during 1957. But by the year's end more than 13,000 copies of the new *Handbook* had been distributed to the American business community and to embassies and missions overseas, and the total value of signed contracts had grown by \$64 million, a larger increase than in any previous year.

⁶¹ Testimony of Steuart L. Pittman, Assistant General Counsel, Foreign Operations Administration. U.S. 83rd Congress, 2nd Session, House Committee on Foreign Affairs, *Mutual Security Act of 1954, Hearings*, Washington, p. 1194.

Although in mid-1957 the Program's Director felt that contract processing was slow and "will continue to be [so] until we can apply sufficient trained personnel to a rapidly growing program,"⁶² a year later Guaranties Staff officers felt that service to guaranty applicants was being provided on a current basis, and that no backlog existed. The huge volume of pending applications and the long period which generally elapsed between initial application and final signing of the agreements remained, but were due in large measure to delays in negotiation and planning by firms rather than in actual servicing by the Guaranties Staff.⁶³

During 1958, in addition to writing contracts for a record \$212 million, the Guaranties Staff continued its emphasis on the movement of private capital to underdeveloped countries, first stressed by Director Charles Warden in 1957. Although the Program was instituted with only one such country—Ghana—during the year, negotiations were proceeding with about 30 more, and the first guaranty contracts ever issued in Iran, Bolivia, Ecuador, and India were concluded. In addition to intensified efforts to increase the participation of underdeveloped nations and to facilitate the negotiation of specific investment agreements in them, "the education of foreign countries on climate matters and of potential United States private investors on investment opportunities"⁶⁴ was regarded as an essential aspect of the geographical expansion effort. Indeed, by 1958, Guaranties Staff efforts to pass on information on investment in various countries secured from their embassies in Washington and other sources were intensified enough so that the Director could say that "a small information center on country investment is maintained [at our office] for the benefit of the investor."⁶⁵

Early in 1959 the Guaranties Staff became the Investment Guaranties Division of the newly created Office of the Deputy Director for Private Enterprise. This body, whose creation reflected an increased emphasis by the ICA on the promotion of private enterprise, combines policy making, liaison and coordinating functions with respect to the private-enterprise-promotion aspects (Section 413) of the Mutual Security Act. The current functions of the Investment Guaranties Division itself can be summarized from the most recent relevant ICA

⁶² Testimony of Charles B. Warden, U.S. 85th Congress, 1st Session, House Committee on Foreign Affairs, *Mutual Security Act of 1957, Hearings*, Washington, p. 1259.

⁶³ Letters from Thomas P. Doughty, June 9 and 24, 1959.

⁶⁴ Warden, *op. cit.*, p. 1260.

⁶⁵ Testimony of Charles B. Warden, U.S. 86th Congress, 1st Session, House Committee on Foreign Affairs, *Mutual Security Act of 1959, Hearings*, Washington, p. 891.

Manual Order roughly as follows: to develop criteria, policies, and procedures within the framework of the authorizing guaranty legislation and to administer the Program pursuant thereto; to advise on and coordinate the negotiation of agreements with foreign governments instituting the Program; to advise representatives of private enterprise on matters which might help promote private investment abroad; to review and evaluate proposed projects for which guaranty protection is requested, prepare and negotiate contracts with the investor and conduct their final processing (the Export-Import Bank, as fiscal agent, collects future fees and settles claims); to formulate plans for the maximum utilization of the Guaranty Program in the encouragement and facilitation of private enterprise abroad, and to keep business and trade gatherings informed on, and to promote, the aims of the Mutual Security Act; to provide information and guidance to the field on the Investment Guaranty Program through the sending of bulletins on developments in the program (such as its Circular Letter, instituted early in 1958) to a selected mailing list and through the publication of a handbook at periodic intervals.⁶⁶

Among the more important and difficult duties of the Division, not made clear in the above summary, is the definition, in advance, of the exact conditions under which guaranty claims will be honored. This is a particularly delicate task because, while it is the ICA Guaranties Division which negotiates contracts and gives assurances to potential investors, it is the Export-Import Bank which has full discretion to decide, in the event of claims, whether a given occurrence falls within the coverage of the guaranty contract. The *Handbook* gives the guidelines developed by the Division; these are spelled out in somewhat greater detail in the specimen guaranty contracts provided to prospective investors and other interested individuals.

Convertibility guaranties cover total blockage of currency and also protect against any deterioration in the investor's situation after the signing of the contract in cases where multiple exchange rate systems are used or partial convertibility restrictions are in force.⁶⁷

⁶⁶ ICA Manual Order No. 226.1, March 26, 1959. During 1958, in a special effort to reach small and middle-sized firms, 18,000 copies of a special pamphlet on the Program were printed for distribution by the Small Business Administration.

⁶⁷ Convertibility is guaranteed at 95 percent of a reference rate set by the Guaranties Division. This is usually, although not always, the exchange rate certified by the Treasury Department for use in collecting customs duties on imports from the country in which the investment project is located at the time the contract is issued. Where fixed multiple exchange rates exist, the investor is guaranteed against a deterioration in the relationship of the reference rate to the exchange rate applicable to the transfer of earnings between the time he makes the contract and the time he withdraws his receipts. International Cooperation Administration, *Investment Guaranty Handbook*, Washington, 1957, pp. 13-14.

Expropriation, which, for guaranty purposes, includes "taking," whether with or without compensation (in the latter case confiscation), is defined as follows in the case of equity investments: ". . . if, for a period of one year, the foreign government prevents the exercise of substantial control over the investment property. Taxation or regulation by the foreign government will not be considered expropriatory unless it can be shown that the government's primary object is to divest the owners of their investments. . . . In loan investments, expropriation will be deemed to have occurred if, for a period of one year, the foreign government prevents any repayment of principal or, for a period of three years, prevents any payments of interest."⁶⁸ Gradual profit impairment through some method of "creeping expropriation" is not mentioned.

The present war risk guaranty protects "against loss resulting from direct damage to or destruction of physical plant, equipment and facilities covered by the guaranty contract and caused by war," including defense action. Consequential damage, such as inability to conduct business and other intangible losses, is specifically excluded from coverage, as is damage caused by "civil war, revolution, rebellion, insurrection, or civil strife."⁶⁹

Whether because of the desire of foreign governments to maintain their credit standing with the United States, or because of investors' reluctance to press claims and thereby impair their relations with the host country in a situation which may prove temporary or otherwise soluble, no formal claim has yet been submitted under a guaranty contract.⁷⁰ Not until such situations have arisen will the Division know whether its definitions and distinctions are adequate and whether or not, as a number of legal commentators seem to fear, the inevitable vagueness of a priori definitions will prove a handicap in the settlement of actual cases.

⁶⁸ *Ibid.*, pp. 19-20.

⁶⁹ *Ibid.*, p. 23. Expropriation of property by a government coming to power through revolution would, of course, be covered under an expropriation guaranty contract.

⁷⁰ A number of situations have arisen which looked as if they might bring claims proceedings. During August-September 1957, just after France had instituted the premium and penalty system requiring certain classes of dollar buyers, including investors, to pay a premium of 70 francs per dollar, investors were discriminated against vis-à-vis French importers of many United States products. Holders of convertibility contracts thus had grounds for instituting claims proceedings, although none did. Since October 1958, the Monetary Board of the Central Bank of the Philippines has suspended earnings remittances. At the time of this writing the U.S. Government is still exposed to claims from guaranteed investors in this area, although none has yet been filed.

Another question which has increasingly plagued the guaranty officers in their administration of the Program's operations is the uncertainty and potentiality of conflict arising from the overlapping of its guaranty authority with that of other institutions.⁷¹ The situation with respect to the Export-Import Bank has already been mentioned (pages 30-31); since 1957, the powers of the Development Loan Fund have been the cause of even greater confusion. The insurance powers of the Development Loan Fund are considerably broader than those of the Guaranty Program; it can insure against losses due to revolution, insurrection, and civil commotion, and the issuance of its guaranties is not dependent upon the existence of a bilateral agreement with the host country. In fact, the sole limitation in its authorizing legislation is that "No guaranties of equity investment against normal business-type risks shall be made available under this subsection."⁷² Although Congress clearly intended, as the House Foreign Affairs Committee *Report* states, that "This authority would serve as a complement to the authority already provided under the investment guaranty provisions of section 413 (b) (4) of the act,"⁷³ the existence of overlapping jurisdictions remains a fact, and cannot help but concern the Guaranties Division as it continues its efforts to expand the operations and coverage of the Program which it administers.

⁷¹ Several international lending institutions also possess guaranty powers. International Bank loans are made under the joint guaranty of its member governments; in addition, its charter requires that loans to private firms and institutions be guarantied by the government in which the investment is located. Its affiliate, the International Finance Corporation, has the authority to guaranty securities in which it has invested to facilitate resale, but so far has never done so.

⁷² *Mutual Security Act of 1957*, 71 Stat. 358.

⁷³ *U.S. Code Congressional and Administrative News*, 85th Congress, 1st Session, II, p. 1490.

III. THE SCOPE AND EFFECT OF THE PROGRAM

THE history of the Guaranty Program over a decade shows a steady growth, not without reversals but with an upward trend of increasing acceleration during recent years. At present, guaranties issued total more than \$448 million in 23 countries, of which \$167 million is for investments in 14 different underdeveloped nations.¹ In 1949, when net capital outflow for direct investment totalled \$660 million, the face value of guaranties issued during the year was less than \$4 million.² In 1958, although recession conditions had caused direct capital outflows to drop from three times to less than twice the earlier figure, the annual figure for guaranties issued had increased more than fifty times to \$212 million. While no direct comparison can be made of these two sets of figures in percentage terms, because of the "double counting" often involved in guaranty figures, on the one hand (e.g. when both convertibility and expropriation contracts are held for the same investment), and the fact that often only part of a given investment is insured, on the other, they nevertheless make clear the expansion of the Investment Guaranty Program in terms not only of absolute dollar amounts but of relative importance on the American foreign investment scene.³ The greatly increased proportional coverage of a growing total reflects in part the broadened geographical scope of the Program, in part also its increased acceptance and utilization by the American business community.

¹ All figures in this chapter concerning the Investment Guaranty Program, unless otherwise noted, are derived from the quarterly (later semi-annual, and then annual) reports to Congress of the agency administering the Program, or from supplementary unpublished material provided by the present Guaranties Division. The yearly growth of guaranties issued and pending is shown in Tables VI and VII, while Table VIII lists guaranties authorized and in effect, by country, as of June 30, 1959. Discrepancies between certain figures in the text and corresponding ones in Table VI, particularly for the early years of the Program's operation, are due to the fact that the contemporary reports to the President included only figures for contracts actually signed during the period under review, while it is now the practice of the Guaranties Division to date a guaranty in the year in which "the first substantial investment output" was produced by the enterprise concerned, even though the contract itself might not have been completed until a later date.

² Guaranty figures have been compared to annual direct investment capital outflow rather than to total annual increase in book value of direct foreign investment (capital outflow plus reinvested profits) because, although under certain conditions guaranties covering reinvested earnings can be obtained, they have not been sought. Apparently it is only for their dollar investments that American businessmen require insurance against extraordinary risks.

³ Sometimes the equity but not the loan portion of an investment is guaranteed, or vice versa. Incomparabilities between the two groups of statistics also arise because some investments covered by guaranties do not fall into the "direct" category and because, while Commerce Department statistics are presented in terms of net capital outflow, it is actually the figures for gross outflow which would be relevant to this discussion.

Gradual Expansion of the Program

Only one convertibility guaranty, for an \$850,000 investment in a carbon-black plant in England, had been made by the end of 1948, although the Program had been instituted with 12 European countries and 12 applications totalling over \$5 million were pending, 11 of which had been approved by the Administration and were awaiting the approval of the host country. By the end of 1949 the Program included 14 signed contracts with a combined value of \$3.9 million, and by the end of the following year the total had jumped to \$24.9 million, representing 26 investors. A great deal of this increase was accounted for by the \$14.5 million guaranty issued to Standard Oil of New Jersey for investment in an Italian subsidiary, STANIC. During these years, however, only one new country, West Germany, had been added to the list of participating countries. (A chronological list of participating countries is given in Table V.)

During 1951 the first expropriation guaranties were issued, one to the Otis Elevator Company and one to the Firestone Tire and Rubber Company, both for investments in West Germany. By the time the Program passed from the ECA to the Mutual Security Agency at the end of 1951 it had issued 37 contracts for investments and earnings valued at \$33.5 million, \$1.3 for expropriation and the rest for convertibility.

Three non-European countries—Nationalist China, Israel and the Philippines—signed bilateral agreements instituting the Guaranty Program during 1952. The total value of guaranties issued increased rather slowly during that year and those immediately following, equalling \$39.8 million at the end of 1952, \$42.4 million at the end of 1953, and \$48.5 million by the close of 1954. By the latter date 21 countries, six of them non-European, were Program participants, 18 of them having signed agreements covering expropriation as well as convertibility guaranties.

During 1955, the Foreign Operations Administration's second full year, bilateral convertibility agreements were signed with ten new countries, six of them in Latin America, which had until then refused to negotiate such agreements. All but two of the new Program members also consented to the institution of expropriation guaranties in their countries. Agreements now existed with 12 European, six Latin American, four Far Eastern and four Near Eastern countries. During 1955, also, the number of contracts issued increased from 69 to 98

TABLE V
 Countries Participating in the Investment Guaranty Program
 Annual Entry into Program 1948-1959*

<i>Year</i>	<i>Convertibility</i>	<i>Expropriation</i>	<i>War Risk</i>
1948	Austria Belgium Denmark France Greece Italy Luxembourg Netherlands Norway Portugal Turkey United Kingdom		
1949	Germany		
1950			
1951		Germany Italy	
1952	China (Taiwan)	Austria Belgium China (Taiwan) Denmark France Greece	
	Israel	Israel Netherlands Norway	
	Philippines Yugoslavia	Philippines Yugoslavia	
1953	Haiti	Haiti Portugal	
	Spain	Spain	
1954	Japan Thailand	Japan Thailand	
1955	Bolivia Colombia Costa Rica Ecuador Guatemala Honduras Ireland Pakistan	Bolivia Costa Rica Ecuador Guatemala Honduras Ireland Pakistan	
1955	Paraguay Peru	Paraguay	
1956	Jordan	Jordan Luxembourg	
1957	Afghanistan	Afghanistan	Afghanistan China (Taiwan)
	Cuba India Iran	Cuba Iran	
			Israel Italy Thailand
	Viet Nam	Turkey Viet Nam	Viet Nam

TABLE V (continued)

Year	Convertibility	Expropriation	War Risk
1958	Ghana	Ghana	Austria Jordan
1959	Finland Malaya, Fed. of Nicaragua Sudan Tunisia	Finland Malaya, Fed. of Nicaragua Sudan Tunisia	Nicaragua Sudan Tunisia

* Through July 31.

Source: International Cooperation Administration, Investment Guaranties Division.

and their total value from \$48.5 million to \$94.5 million. The Program had picked up considerable momentum.

The past three and a half years of the Program's operation, under the ICA's Investment Guaranties Staff, have shown the same kind of significant and uninterrupted growth. By the end of 1956 there were 144 contracts in 15 countries, with coverage of \$92.5 million for convertibility and \$31.0 million for expropriation. Applications pending at that time had reached the unprecedented sum of more than half a billion dollars, some of them for the new war risk guaranty, and represented 25 countries.⁴

War risk agreements were signed with six countries during 1957, five of them "underdeveloped," and by the end of the year applications for this type of guaranty had been processed, but various delays, often involving investors' disappointment at the limitations of the guaranty, prevented the actual completion of any such contracts during the year. The number of participant countries had by now reached 31 and the total face value of all guaranties \$187.5 million, \$151.9 million of which were still in effect, after reductions and cancellations had been subtracted. Pending applications, even after more than \$100 million of them were culled out as inactive or abandoned, stood at \$631 million, representing 29 countries.

⁴ Guaranties issued in any given year, as a glance at Tables VI and VII will show, are always a rather small proportion of guaranties pending. This is due both to the fact that many applications may be pending over several years, while an investor completes his plans, before becoming completed contracts, and to the fact that numerous applications, representing only tentative investment plans which are often changed or abandoned, never become final guaranty contracts.

The Recent Acceleration

In terms of both new guaranty contracts completed and of applications received, the Program did more business during 1958 than in all the previous nine years of its existence. Guaranties issued rose by \$212 million to \$400 million, while pending applications jumped from \$640 million to more than \$1 billion, and for the first time in the Program's history, more than half of the former as well as of the latter were for investments in underdeveloped areas. Guaranties were written for the first time in four such countries, and the two largest contracts in the history of the Program—a \$72 million expropriation guaranty for an Olin Mathieson bauxite development project in Guinea and a \$17.8 million convertibility contract for the W. R. Grace Company's chemical fertilizer plant in Trinidad—were concluded for investment projects in less advanced areas. Both these transactions were significant in that, for the first time in post-depression history, a large proportion of the American investment was obtained from insurance companies and other institutional lenders, indicating that one of the nation's largest sources of investment capital may at last be available for projects contributing to the development of backward economies. In addition, in the case of the Olin Mathieson enterprise, guaranties were provided for the first time to a project developing a country's basic resources, including port facilities, a railroad, schools, and hospitals.

As of June 30, 1959, total issues of convertibility and expropriation guaranties had reached a face value of \$448.7 million, of which \$167.4 million were in less developed areas (see Table VI). Applications for another \$877.4 million were pending, of which \$515.4 million were for projects to be located in underdeveloped countries (see Table VII).⁵ Of the total pending, \$493.9 million were for convertibility insurance, \$301.1 million for expropriation, and \$82.5 million for war risk. The cumulative total of guaranties outstanding, as of this date, amounted to \$369.8 million (see Table VIII). In all, 42 countries had agreed to participate in convertibility guaranties, 38 in those against expropriation and 11 in those against war. Some 25 of the participants, including five of the six which joined the Program during the last two years, are less developed non-European countries. Fees collected since the Program's inception equalled close to \$4 million, while no payments under guaranty contracts had yet been claimed.

⁵ Plus \$244.1 million in applications for projects in countries not yet participating in the Program. The drop in the pending applications figure between December 31, 1958 and June 30, 1959 was due to a "thorough pruning" by the Guaranties Division in the interim to eliminate all applications not being actively pursued.

TABLE VI
Investment Guaranties Issued, 1948-1959
(Millions of Dollars)

	<i>Developed Countries</i>	<i>Underdeveloped Countries</i>	<i>Total</i>	<i>Cumulative Total</i>
1948	2.0		2.0	2.0
1949	3.9		3.9	5.9
1950	19.6		19.6	25.5
1951	8.5		8.5	34.0
1952	3.0	2.8	5.8	39.8
1953	2.6		2.6	42.4
1954	6.1		6.1	48.5
1955	37.7	8.3	46.0	94.5
1956	21.2	7.8	29.0	123.5
1957	45.4	18.6	64.0	187.5
1958	98.7	113.3	212.0	399.5
1959 (First half)	32.1	16.6	48.7	448.2

Source: International Cooperation Administration, Investment Guaranties Division.

TABLE VII
Applications Pending for Investment Guaranties, 1948-1959
(Active as of December 31 of each year)
(Millions of Dollars)

	<i>Developed Countries</i>	<i>Underdeveloped Countries</i>	<i>Total</i>
1948	5.4		5.4
1949	32.0	2.3	34.3
1950	36.2	12.9	49.1
1951	27.9	10.3	38.2
1952	36.0	17.2	53.2
1953	41.2	46.1	87.3
1954	98.0	34.0	132.0
1955	113.0	160.0	273.0
1956	182.4	327.7	510.1
1957	154.9	476.7	631.6
1958	429.0	611.0	1040.0
1959 (First half)	362.0	515.4	877.4*

* Does not include \$244.1 million in non-participating countries, mostly in Latin America.

Source: International Cooperation Administration, Investment Guaranties Division.

TABLE VIII
Guaranties Authorized and in Effect, As of June 30, 1959

<i>Industrial Guaranties under ICA Authority</i>			<i>Cancellations and Expirations¹</i>	<i>Balance of Guaranty</i>	<i>Fees Collected</i>
<i>Country</i>	<i>Number</i>	<i>Guaranties Authorized</i>			
Austria	3	\$ 2,030,000.00	\$ 2,000,756.18	\$ 29,243.82	\$ 7,739.94
Belgium	6	252,000.00		252,000.00	2,400.00
Bolivia	4	7,500,000.00		7,500,000.00	48,750.00
China	8	6,212,403.12	5,140,403.12	1,072,000.00	75,414.33
Denmark	1	182,500.00	182,500.00		2,408.75
Ecuador	1	252,945.48		252,945.48	632.36
France	56	111,614,923.00	4,753,101.79	106,861,821.21	757,640.33
Western Germany	58	51,943,643.17	6,302,650.81	45,640,992.36	588,619.15
Greece	2	1,189,700.00	198,611.27	991,088.73	12,431.58
Guatemala	9	3,219,000.00	494,000.00	2,725,000.00	12,920.00
India	3	6,256,000.00		6,256,000.00	9,190.00
Iran	6	16,730,000.00		16,730,000.00	57,775.00
Italy	57	148,971,272.64	36,802,665.33	112,168,607.31	1,620,064.77
Jamaica	1	56,000.00		56,000.00	140.00
Japan	6	3,294,000.00	1,560,765.14	1,733,234.86	42,118.88
Jordan	2	7,250,000.00	3,650,000.00	3,600,000.00	49,125.00
Netherlands	21	7,827,891.21	4,682,879.05	3,145,012.16	79,223.76
Pakistan	2	795,000.00		795,000.00	12,492.14
Paraguay	1	3,000,000.00		3,000,000.00	15,000.00
Peru	3	8,344,468.00	319,700.00	8,024,768.00	45,098.68
Philippines	11	8,009,250.00	59,989.04	7,949,260.96	72,061.36
Thailand	6	664,400.00		664,400.00	6,111.25
Trinidad	1	17,749,125.00		17,749,125.00	44,372.81
Turkey	8	4,365,752.04	2,656,851.17	1,708,900.87	65,589.49
United Kingdom	36	30,987,101.30	10,079,987.52	20,907,113.78	422,533.25
Total	312	\$448,697,374.96	\$78,884,860.42	\$369,812,514.54	\$4,049,852.83

¹ Includes reductions in face, direct receipts by investors and cancellations.

Source: International Cooperation Administration, Investment Guaranties Division.

A geographical breakdown indicates even more clearly than do the overall figures the fact that 1958 marked an important turning point in the utilization of the Investment Guaranty Program for projects in underdeveloped areas. By mid-1958 less than 20 percent (in dollar volume) of all guaranties ever issued were for such investment; one year later the proportion had doubled (see Table VI). Of the 43 countries participating in the Program, guaranties have been issued in only 23, including 12 less developed nations, but of the 35 countries in which guaranty applications are now pending, 24 are underdeveloped. Although four European countries—France, Germany, Italy, and the United Kingdom—appear at first glance to account for more than 75 percent of the dollar volume of guaranties issued, this figure drops immediately to slightly more than 60 percent when the \$72 million Olin Mathieson guaranty in African Guinea is subtracted from the French total,⁶ and recently the dominance of these advanced countries has been steadily diminishing.

These trends lend support to the discussion in Chapter I,⁷ which indicates that there is ample scope for investment in the lesser developed areas. The potentialities of the Guaranty Program depend, therefore, on its ability to overcome the obstacles to private investment, and upon the willingness of American business to utilize its services. It is to these two questions, therefore, that the remainder of this chapter must be devoted if we are to assess the value of the Investment Guaranty Program as an incentive to increased private foreign investment in the near future.

Meeting the Obstacles to Foreign Investment

The obstacles to foreign direct investment divide obviously into two classes, those due to the behavior of the foreign government and those whose causes lie in the very nature and state of development of the country itself. These categories overlap, of course, in the sense that certain actions of foreign authorities can be traced to the peculiar problems of underdeveloped nations, but for the most part they can be distinguished, and it is only with the former that the Investment

⁶ When this guaranty was issued in 1958 the present Republic of Guinea was still a French possession, and the figure is therefore included in the French total in Guaranties Division tabulations. Since ICA guaranty contracts cover the actions of future as well as present governments, contracts now in force in Guinea are unaffected by its change to independent status. However, no further guaranties can be issued there until that nation signs agreements instituting the Program in its own right.

⁷ See p. 7.

Guaranty Program can properly be concerned.⁸ The latter must await reduction through the efforts of "social overhead" public grants and of pioneering private enterprisers, a much slower working cumulative process. The important questions, then, are: what proportion of the obstacles to foreign investments can be attributed to factors under foreign government control, and how many of the more important of this type of impediment are covered by the Investment Guaranty Program. One can expect only rough qualitative answers, since such nebulous phenomena as "obstacles" do not lend themselves to precise definition, much less quantitative measurement.

Numerous books on international economics in recent years have discussed the problem of impediments to private international investment, and most of them cite the same group of prime factors, differing only in emphasis. But only two major studies of the problem, based on analysis of questionnaires returned by numerous foreign investors, have been made since the war: the National Industrial Conference Board study, published in 1951, made at the request of the President's Committee for Financing Foreign Trade;⁹ and the 1953 Department of Commerce Study, carried out under section 516 (c) of the Mutual Security Act of 1952,¹⁰ as part of Congress' effort to reduce impediments to American investment in several important groups of countries.¹¹ It is on these two documents that the present discussion will be primarily based and, because conditions are so different in different parts of the world, their policy of dividing the free world into several areas for purposes of discussion will be followed.¹²

Important among the obstacles to foreign investment in many parts of the world is the existence of export or import quotas, or both, which restrict markets and often make the acquisition of the best and cheapest equipment impossible. Quantitative trade restrictions, cited by the

⁸ See the discussion of the function of state credit insurance in Chapter I.

⁹ National Industrial Conference Board, *Obstacles to Direct Foreign Investment*, New York, 1951.

¹⁰ U.S. Department of Commerce, Bureau of Foreign Commerce, *Factors Limiting U.S. Investment Abroad*, Washington, 1953 and 1954. This is the most recent intensive study of specific investment climate problems, since the 1958 Department of Commerce questionnaire on private investment does not cover this aspect of the subject. Since conditions have changed considerably during the intervening six years, some of the following observations are now out of date.

¹¹ The countries covered by the study are divided into four categories: those with good investment opportunities but where little American capital is going; those where United States direct investment is the greatest; those where the postwar rate of capital flow has been the greatest; and those receiving the most United States economic aid.

¹² Canada is omitted from these studies, since investment risks there are virtually the same as those encountered by domestic enterprises.

National Industrial Conference Board as the one obstacle mentioned by investors as most important in all areas, are also the one which does not fit into either of our broad categories. These have their origin in worldwide trade conditions which developed during the depression of the 1930's, and while their use has diminished in recent times, they are still important impediments. Insurance against them would not be feasible, both because their existence is widespread and because the United States herself utilizes them. Since this obstacle is to a large degree worldwide, it will not be discussed again in the separate area analyses, but must be understood to head the list in many cases, particularly the underdeveloped countries.

Exchange risk, involving a limitation on the remittance of profits or repatriation of capital, constitutes a major problem in Latin America, where nearly half the currencies are subject to controls and often are not convertible except at penalty rates. The resulting delays and uncertainties concerning currency values are particularly hard on small enterprises without sufficient resources to ride out a period of stringency. Concern about outright expropriation or nationalization without adequate compensation ranks surprisingly low on the list, far below the purely economic drawbacks to investment in this area, but fear of "creeping expropriation" through fines, discriminatory and burdensome taxes, and social security legislation or unfairly low profit rate controls is nearly as important an impediment as quantitative trade and exchange controls. Next in importance appear to be a number of cost-increasing economic conditions: lack of trained native personnel, of adequate roads, railroads, harbors, power facilities, and of efficient banking and credit facilities. Generally accompanying this economic backwardness is an absence of the large markets which can alone make American low-cost high-volume production methods profitable. Among other problems particularly important in Latin America are the restrictions on importation of employees from the home country and requirements regarding local participation in the enterprise. In many cases, partial or total exclusion of foreigners from certain fields of enterprise have prevented investment.¹³ Finally, there are the important general problems which so often give pause to pro-

¹³ The procedure of "screening" foreign investments before admitting them is a controversial one. Representatives of foreign governments often insist that this is not an obstacle but an advantage to the prospective investor, in that it protects him from the possibility of suffering the effects of exchange stringency. But the device is not always confined to balance-of-payments considerations, and is generally regarded as an unwarranted interference (except when it is exercised for reasons of national security) by American businessmen.

spective investors: the difference in political traditions and legal concepts, often causing fear of unequal treatment before the law; political instability; and a far larger measure of governmental interference in economic and social affairs than North Americans are used to, aggravated by a more "personal" exercise of authority.

In Europe, as in Latin America, conditions relating to currency problems, including the possibility of restrictions on profit remittance or capital repatriation through exchange control, and the frequent restriction of new capital entry to projects likely to improve the balance of payments, have led the list of obstacles to private foreign investment. A related problem has been the difficulty of obtaining supplies at lowest cost because of restrictions on imports from the dollar area. Other significant obstacles have been: high taxes; the restrictions imposed by the power of cartels, by widespread government ownership or control in certain industries, and by the general hostility of European business to American competition and American production and marketing methods; and fear of nationalization. Numerous other impediments, most of them mentioned in the discussion of Latin America, have appeared in isolated instances, but none can compare in frequency or importance with those listed above. It should be noted, however, that most of these impediments have been markedly reduced in recent years and this fact, coupled with the attractions of the Common Market to foreign investment in participating countries, provides some justification for the Program's increasing (and now exclusive) emphasis on facilitating foreign investment in underdeveloped countries.

In the Near East and Africa, as elsewhere, trade and exchange restrictions are the most frequently encountered problem for the foreign investor, but the lack of trained personnel, adequate local markets, and a suitable infrastructure, all closely related to the poverty and low living standards prevalent, are almost as crucial, although wide variations in political, social and economic conditions make such generalizations difficult. Now a factor prevalent throughout the Asia-African world also becomes important, although it often cannot be pinned down as a tangible obstacle: a distrust of and hostility toward foreign private ownership, rooted in a combination of an intensely nationalistic fear of foreign exploitation and a more nebulous feeling that, since much of the world is rich while they are poor, "western bounty is due [them] as of right."¹⁴ Among the important drawbacks which grow out

¹⁴ "Proud Borrower and Shy Investor," *The Economist*, November 7, 1953. It is often contended that an encouragement of this attitude has been an unintended and

of this attitude are laws regarding local labor and management participation, and the possibility of unequal treatment for foreigners in national courts. Somewhat surprisingly, the threat of nationalization or expropriation is not often given as a major obstacle. But alien political and social customs, highly unsettled political conditions, and almost ubiquitous ideological and racial tensions have, apparently, played a major role in preventing the expansion of United States private investment in this area.

Conditions in the Far East are very similar to those described in the preceding paragraph, although internal political tension and external threats are in some cases of even greater immediate concern, and the poverty and population overcrowding, with all their attendant problems for foreign investors, even more acute.¹⁵ Governments of important countries in this area, with memories of past treatment at the hands of European investors still fresh, are perhaps more determined and more confident of their ability to develop without private foreign capital, and so have done less to attract it.¹⁶ According to a Pakistani businessman, underdeveloped countries have actually hindered foreign private investment by insisting that they must be satisfied with small profits. "Under these circumstances, I would do just what the private American investor has so far done—I would keep my money in my pocket."¹⁷ A considerable increase recently in the sphere of government activity and in restrictions on certain fields of private enterprise have led to fears of government competition and nationalization, particularly since denunciations of private enterprise are the basis of many a political success. Finally, throughout Asia and Africa, American unfamiliarity with conditions and customs, lack of adequate economic data and inability to predict the behavior of the host nationals combine to make the actual problems appear even more formidable than they really are.

The single great impediment to private foreign investment from the investor's point of view is, of course, that expected profits abroad

undesirable side-effect of the American foreign aid program. The article goes on to say: "The greater the public aid that is proffered from the West, the more lasting the Middle East's belief that the West is under an unredeemed obligation to it."

¹⁵ Japan cannot properly be included in this general discussion of Far Eastern conditions, since she possesses an advanced industrial economy, developed independently of Western aid or investment.

¹⁶ There have been indications recently that this attitude is improving; India's long delayed willingness to institute the Investment Guaranty Program in 1957 is a hopeful sign.

¹⁷ M. B. Dalal, "The Anatomy of Foreign Investment—A businessman points out difficulties," *United Nations World*, January, 1953, p. 40.

have not exceeded those at home by an amount sufficient to compensate for the extra risks involved. While statistical comparisons of domestic and foreign earnings ratios are difficult and can be misleading because of lack of comparability of the data, one can cite certain broad observations: during recent years foreign earnings in all industries seem to have exceeded domestic earnings by a little more than three percentage points. But this margin is accounted for by the very large earnings of petroleum investments concentrated in a few countries; in other fields domestic and foreign earnings are approximately equal, except in public utilities, where foreign returns are considerably less.¹⁸

In considering the extent to which guaranty coverage helps to reduce the risks of foreign investment and thus make the existing profit prospects more attractive, one must distinguish clearly between obstacles to foreign investment and the risks proper which are peculiar to such investment. Many of the obstacles cited above, such as quantitative trade controls, economic backwardness, burdensome social security legislation and high taxes are not risks at all but simply economic conditions, against which the very considerable advantages of foreign investment in less developed areas, such as the resources and markets to be developed and the lack of competition, must be weighed. It is only when uncertainty enters the picture and makes an objective balancing of advantages and drawbacks impossible that actual risk exists, and it is only with risk that any form of insurance can properly be concerned.

Not all of the important obstacles which face foreign investors are risks in the proper sense, and the extent to which investment guaranties can affect the foreign investment situation is limited by this fact. But convertibility restriction is the most important risk, by a considerable margin, in all areas of the world, and war and direct expo-

¹⁸ Figures taken from the Commerce Department's *Survey of Current Business* and the *Monthly Letter* of the First National City Bank of New York are compared in Raymond F. Mikesell, *Promoting United States Private Investment Abroad*, Washington, 1957, pp. 21-23. Earnings on direct foreign investment are calculated after foreign taxes but before United States taxes. Mikesell notes (p. 21): "it is proper to compare such earnings on foreign investment with the earnings of domestic investment after taxes, because foreign tax credits eliminate over 90 percent of the U.S. corporate tax liability on foreign earnings."

Analysts do not agree, however, on any one figure for the average differential. In speeches before the National Foreign Trade Convention (1953), C. R. Carroll cited it as being as low as 1-2 percent, while Walter J. Lingle, Jr., placed it at more than 6 percent. Clearly, incomparability makes accuracy impossible. One must also remember that companies with investments abroad are likely to represent a more efficient and successful group than American industry as a whole.

priation, while they are somewhat overshadowed by the dangers of "creeping expropriation" and general instability, are nevertheless important considerations in underdeveloped areas. Clearly the risks covered by the Guaranty Program are among the problems which loom large in any consideration of foreign investment, and their elimination must enhance the attractiveness of such investment.

From a longer-range view, this survey suggests a more definitely encouraging view of the Program's future. As basic development, using local and foreign aid and loan resources, proceeds in economically backward areas one can expect that the non-risk obstacles to foreign investment will increasingly be outweighed by the advantages, leaving as problems the actual, largely political, risks which are possible subjects for guaranty coverage. The introduction of insurance against revolution or insurrection and the broadening of the expropriation guaranty to cover some of the more frequent and obvious forms of creeping expropriation would go far toward neutralizing a majority of the crucial impediments to investment in underdeveloped nations.

Business Attitudes toward the Program

Finally, in the assessment of the Program's potentialities, the attitude of American business toward the whole concept of government investment guaranties must be considered. Initial reactions were not encouraging; some typical answers to a poll of executives conducted by *Business Week* just after the Program was announced in 1948 were:¹⁹

We're too busy trying to supply the domestic demand for our products to worry about the opportunities in Europe.

The guaranty against losses through exchange controls doesn't make up for the other risks involved in investing today in Europe. The guaranty doesn't cover any increase in the value of the investment.

This guaranty is just more government paternalism; the taxpayers' money should not be used this way.

We'll wait for a while to see how ECA's whole program works out.

Fortune's prognosis was equally gloomy, saying

. . . that unless Europe adopts correct fiscal policies and gains military security, no politically feasible guarantee will suffice to attract

¹⁹ "Invest in Europe," Says ECA," *Business Week*, June 19, 1948, p. 118.

capital. If on the other hand, Europe stabilizes currencies and has security, such guarantees are hardly necessary.²⁰

At the same time two powerful business associations, the National Association of Manufacturers and the National Foreign Trade Council, expressed unequivocal opposition to the guaranty idea. In the words of the latter:

It [the Council] is convinced that guarantees would tend either toward undue regulation by the United States Government of American private enterprises operating abroad or toward undesirable involvement of the United States Government in business.²¹

Both groups felt strongly that the provision of guaranties was the responsibility of the host, not the United States, government. Since they were at the same time urging with considerable enthusiasm the use of tax reductions or elimination to spur foreign investment, it would appear that it was the regulation rather than the subsidy aspect of the Program that disturbed them.

The United States Council of the International Chamber of Commerce, although it favored giving the Program a trial in hopes that it would reduce the amounts expended in "give-away programs," stated at the very inception of the Program the four objections which business groups have voiced most often ever since, that guaranties might:

- (1) Weaken the incentive to foreign countries to improve the investment climate.
- (2) Involve undesirable government intrusion into the affairs of private business concerns, particularly since some screening of "desirable" from "undesirable" investment projects would be necessary.
- (3) Result in unfair discrimination against existing investments.
- (4) Result in the loss of billions of dollars by the government and, ultimately, the American taxpayer.²²

Another recurring fear of many businessmen was voiced by outgoing Secretary of Commerce Charles Sawyer, on his return from heading a mission to Europe in 1952:

²⁰ "ECA Can't Do Everything," *Fortune*, February 1949, pp. 186-187.

²¹ Austin T. Foster (General Counsel, Socony-Vacuum), "Legislative Implementation of the Point Four Program," *Report of the Thirty-Sixth National Foreign Trade Convention*, New York, 1949, p. 152.

²² United States Council of the International Chamber of Commerce, *Intelligent International Investment*, New York, 1949, pp. 9-12.

The much-discussed investment-guarantee proposals are not an answer nor a wise expedient. Guarantees offered by the United States against occurrences which are the result of policies pursued in other countries would tend to encourage rather than discourage unsound policies, and to promote the very thing which the businessman is afraid of. Realization of this fact here and abroad will stimulate and not retard the process required to persuade American private capital to invest in other countries.²³

This problem of "perverse incentives" is one which every commercial insurance scheme must also face. And, just as in the private case, its seriousness depends very largely on how the guarantor administers cases involving claims. If either the guaranteed investor or the host country felt that it could profit from a situation in which the U.S. Government paid off under a guaranty contract, such a danger might be one to consider. But, as far as investors are concerned, arrangements for procedures to be followed prior to the payment of claims make it highly unlikely that a firm would find a guaranty payment more profitable than continued operation of the enterprise or its disposal by more conventional methods. And, with respect to the host governments, numerous provisions of the Program are specifically designed to avoid the inclination toward such behavior, chief among them the requirement of host approval for all guaranteed projects and the provision that the U.S. Government acquires title to all assets and claims for which it has made payment to an American firm under a guaranty contract. The behavior of these countries so far indicates that they seem to recognize, even in advance, the adverse effect which irresponsible actions leading to guaranty claims would have on their international credit standing. As widespread promotion efforts have made the details of the Guaranty Program known to an increasing proportion of the business community, and as the possible *positive* incentive effect of guaranty availability in pushing an otherwise "hopeless" country into the realm of consideration and thus spurring it to improve its investment climate has been recognized, the "perverse incentives" argument has largely lost its sting.

The Program also had, from the beginning, its supporters in the business community. Representatives of the important Detroit Board of Commerce and of some of the country's most powerful giant corporations appeared regularly at Congressional hearings with suggestions

²³ "Europe's Business Tasks: How U.S. Can Help," *U.S. News and World Report*, December 26, 1952, p. 71.

for improving the Program, which they regarded as an important aspect of the Government's overall effort to increase foreign investment. And over the years, with legislative broadening, administrative improvements, and the favorable experience of individual participants, the fears which lay behind much of the opposition have abated.²⁴ Experience has shown that participating countries almost always offer a more favorable investment climate than non-participants; the gradual reduction in the amount of information required of a guaranty applicant and the absence of any interference by the Guaranty Staff in the management of a guaranteed investment has convinced many sceptics that government support need not mean government control; the obvious inclination of host governments to treat all foreign investment, whether guaranteed or not, alike has voided charges of discriminatory advantages for new investments; and the collection of millions of dollars in fees without need for payment of a single claim to date has allayed fears of a financial catastrophe resulting from the Program's commitments. Even at the annual meetings of the National Foreign Trade Council denunciations of the Program seem to have ceased, although the delegates still appear to prefer the treaty and tax approaches to investment stimulation.

General feelings toward the Program do not always dictate the course of individual action in regard to it, as is demonstrated by the fact that a number of those expressing strong opposition to the general principle of public insurance of private risk nevertheless are participants in the Investment Guaranty Program.²⁵ In its effort to discover the effect of investment guaranties on action rather than

²⁴The enthusiasm of early Program participants has been one of its strongest instruments in winning business' interest and approval: "... the Program's staunchest boosters are the companies working under its umbrella. Boston's Godfrey L. Cabot, Inc., which bought the first policy in 1948 on its British carbon-black plant, points out that an insured company gets a big boost in its credit rating. General Mills, after insuring a bean-processing setup in Pakistan, was so sold on the insurance that it made plans to insure all new foreign investment, 'though we hope we never have to collect.'" *Time*, July 28, 1958, p. 60. The Cabot Company, one of the Program's most active users, has taken out a total of six guaranties for carbon black operations in three countries and currently holds waiver letters for planned enterprises in five more, including India and Argentina. Another "repeat user," with large and highly diversified investments in a number of underdeveloped countries, has made it definite company policy to obtain ICA convertibility insurance on all investments of more than a certain amount in all countries wherein such insurance is available. Among the important firms holding guaranties covering operations in several different countries are: Raytheon, Dow Chemical, Ronson, American Home Products, Otis Elevator, W. R. Grace, Olin Mathieson, Socony-Mobil, B. F. Goodrich.

²⁵U.S. Department of Commerce, Bureau of Foreign Commerce, *Factors Limiting U.S. Investment Abroad*, II, Washington, 1954, p. 26.

opinion, the 1953 Department of Commerce study came up with the following results: of its 366 respondents (247 of whom were foreign investors), about half were acquainted with the Program. Of the foreign investors, 52 percent said that guaranty insurance had a generally encouraging effect on foreign investment and only 5 percent said it did not. But 65 percent replied that this insurance had had no effect on their investment decisions, though some had or felt they might acquire insurance after the decision had been made. Only 8 percent said that the existence of the Program had encouraged their decisions, while 9 percent more felt that they might make use of the guaranties. But not one executive interviewed felt that, in any single investment decision, the existence of guaranties had tipped the scales.²⁶

That business enthusiasm for and utilization of the Guaranty Program has increased greatly in the past six years is made clear by a comparison of two more recent surveys of business opinion with the earlier one analyzed above. Of the 55 corporations, all of them Program participants, who answered a questionnaire distributed in connection with a study made in 1957-1958 by a group of students at the Harvard Business School, 50 percent replied that the investments would have been made even without guaranties, 20 percent were not sure, and 20 percent said definitely that the investments would not have been made if guaranties had not been available.²⁷ By 1958-1959, the group of foreign investments made possible by the existence of the Investment Guaranty Program, which did not seem to exist at all in 1953, had grown still further; of the 41 respondents to a Commerce Department questionnaire regarding private investment abroad who were Program participants, fully half "say that their decision to invest abroad was based upon the availability of a guaranty."²⁸

The latest Commerce Department survey also indicates a growing sense of the importance of investment guaranties among the larger business community, whether currently Program participants or not. Of the 110 respondents, all with international business interests, whose plans for expansion were based on the assumption that they would receive some type of government assistance, the largest number indicated that they would probably seek investment guaranties. When asked what sort of increases or changes in government assistance would encourage their expansion plans still further, 50 of 184 respondents

²⁶ *Ibid.*, pp. 26-30.

²⁷ Peter Strauss et al., *The Investment Guaranty Program*, Cambridge, Mass., 1958, p. 45.

²⁸ U.S. Department of Commerce, *Responses to Business Questionnaire Regarding Private Investment Abroad*, Washington, 1959, p. 9.

cited increased availability and widened coverage of ICA investment guaranties; only tax concessions were mentioned more often (51 instances) in reply to this query. Similarly, in response to a question asking what government inducements were considered necessary, in general, to encourage greater private investment abroad, investment guaranties again ranked second only to tax incentives, being mentioned by 49 percent of 358 respondents "as a stimulant to increased private participation in the economic growth of underdeveloped countries," while only eight respondents opposed an expansion of the Guaranty Program.²⁹

The steadily mounting number of guaranty applications bears out the conclusion drawn from a comparison of the studies discussed above: that the Investment Guaranty Program has at last begun to have a steadily growing incentive effect, at least collateral and in some cases decisive, on the movement of American capital abroad. The history of the Program's development, seriously discouraging at first, has become increasingly bright in recent years. Growing at a steadily accelerating rate, it has gradually been broadened to cover an increasing proportion of the serious political obstacles to foreign investment. It is apparently overcoming much of the initial hostility of the business world, and is beginning to take its place as a significant factor in an increasing number of foreign investment decisions. The Program remains small in comparison to the total volume of American foreign investment, it still has powerful and intransigent opponents, and it has yet to reach and impress large segments of the foreign investment community. But events of recent years give hope that it will prove equal to these problems.

²⁹ *Ibid.*, p. 15.

IV. SOME PROBLEMS AND THEIR POSSIBLE SOLUTIONS

ASIDE from the general attitudes of business toward the Investment Guaranty Program, discussed in the preceding chapter, a number of specific difficulties are often mentioned by foreign investors, both participant and non-participant. Among the most important is the complaint of inadequate coverage, both functional and geographical.

The Question of Functional Coverage

The chief inadequacies of present risk coverage, confirmed by replies to the 1958-1959 Commerce Department survey, seem to be its exclusion of any form of creeping expropriation, of devaluation, and of revolution and insurrection. To deal with the first problem would require a definition of expropriation for guaranty purposes at once broader and more precise, thus reducing the wide area of administrative discretion in deciding whether a given loss is covered by the guaranty, and provision for some objective body to pass on claims which would eliminate the problem of divided responsibility between the ICA and the Export-Import Bank. As things now stand, this situation is particularly objectionable, in the eyes of some observers, because of the requirement that, to be regarded as expropriatory, an action must have "the *primary object* of divesting any or all of the then existing owners from their share of ownership or control in the foreign enterprise."¹ Leaving this question to the sole decision of the Export-Import Bank, they feel, makes it subject to restrictive interpretation against the investors' interests.² The referral of questions of interpretation to an arbitrator or some other form of judicial settlement has been suggested as one means of alleviating fears on this score. Presumably, also, administrative broadening and clarification of what constitutes expropriation, now that Program administrators have learned from actual experience "the extent to which the policy limitations may hamper our going as far as many investors feel that we should," would not require the renegotiation of bilateral agreements.³ It is possible that foreign countries might resent the definition

¹ Specimen Contract of Guaranty (Expropriation), I(E)3, p. 3.

² "Report of the Committee on Foreign Law on the Guaranty Program of the International Cooperation Administration," *Record of the Association of the Bar of the City of New York*, June 1959, p. 272.

³ Letter from Thomas P. Doughty, June 9, 1959. Despite these limitations, an expropriation guaranty contract still provides the investor with greater protection than

of certain actions as "expropriation" which they would not consider so but, on the other hand, they might, by the same token, be restrained from taking such actions by their demonstrated desire to avoid situations leading to claims under the Guaranty Program.

While the enabling legislation is as vague on the subject of convertibility as it is on expropriation, the Investment Guaranties Division makes it clear in its *Handbook* that the "reference exchange rate" system on which guaranties are based provides no protection against devaluation of the foreign currency in terms of United States dollars subsequent to the signing of the guaranty contract. The devaluation threat, which is of paramount importance to many potential investors in less developed countries, would seem to fall in the category of political rather than commercial risks, and thus be appropriate for public guaranty coverage. While in some cases the internal inflation which so often accompanies or precedes devaluation tends to provide its own protection for business in the form of rapidly increasing prices and profits, there are numerous instances where this market mechanism does not function to protect the investor, and it is certainly inoperative in cases where profits are limited by regulation of the host government. Furthermore, the necessity for excess depreciation reserves (in dollar terms) and for write-offs of working-capital values is in any case likely to be a serious problem for investors. Any decision regarding the inclusion of devaluation risk among those eligible for government guaranty would, however, have to consider that the liability incurred by the U.S. Government in the event of a runaway inflation in a country where sizable guaranteed investments are located might prove very large.

A guaranty against revolution, insurrection, and civil strife has not only been mentioned as highly desirable by a large number of businessmen and urged by virtually all important recent reports to the government on the subject of encouraging foreign investment, but has been since 1950 strongly supported by the House Foreign Affairs Committee, which has been annually frustrated by Senate opposition in its attempts to include such a provision in the legislation. From a theoretical point of view, such a guaranty would seem more justifiable than the existing one against war, since modern methods of warfare have made this latter peril virtually worldwide, while the danger of

he could expect to receive under international law. Viz. J. Thomas Tidd, "The Investment Guaranty Program and the Problem of Expropriation," *George Washington Law Review*, June 1958, pp. 710-729.

destruction due to revolution is far greater for foreign than for domestic investment. And, from the practical viewpoint of furthering American foreign policy aims, such a guaranty would seem particularly desirable, since it is in many of the underdeveloped countries most needing American investment that such dangers are the greatest. Evidence, based on nearly two years of experience, that, largely because of this limitation, the war risk guaranty as presently constituted has totally "failed to catch on with the American investment community" adds considerable support to the above arguments.⁴ While the difficulties of negotiating a guaranty agreement in which a government tacitly recognizes its own instability are likely to prove great indeed, unless such broadened coverage is provided one of the risks most feared when investment in economically backward areas is under consideration will remain uninsurable.

The Question of Geographic Coverage

The amendment to the Mutual Security Act of 1959 restricting the issuance of future guaranties to investments in underdeveloped areas alone (see pp. 34-35) is obviously a limitation as far as geographical coverage is concerned, although there are some indications that it may not prove as serious a deterrent to the Program's effectiveness as would at first appear. In at least seven European countries—Austria, Belgium, Denmark, Greece, Luxembourg, Norway, and Portugal—which have had guaranty agreements for a number of years and in most of which there is appreciable American investment, there has been either very little or no utilization of investment guaranties. The dropping off of applications for contracts covering investments in Europe, coupled with the fact that several companies have recently cancelled early guaranties in such countries as Great Britain and Germany, indicates business recognition of the fact that insurable risks have definitely lessened in a number of European areas since the early postwar years. Nevertheless, any such geographical restriction is bound to retard the growth of the Program somewhat and to disappoint those investors, including a number of repeated users of guaranties, who still regard the European risks as substantial.⁵ Con-

⁴ Testimony of Charles B. Warden, U.S. 86th Congress, 1st Session, House Committee on Foreign Affairs, *Mutual Security Act of 1959, Hearings*, Washington p. 894.

⁵ Slightly more than a third of the dollar volume of all applications pending for investment guaranties as of June 30, 1959 was for European countries, with two-thirds of these representing convertibility contracts desired for investments in France.

gress' view is apparently that a situation has at last emerged in which American capital is once again available to industrialized foreign nations without guaranties, and that the full incentive powers of the guaranty method should therefore be concentrated on economically backward areas. The test of the correctness of this view will be twofold: whether investment in Europe continues to grow, and whether the flow of guaranteed funds to less developed nations is noticeably accelerated by the newly exclusive privilege accorded to investors in these areas.

Another set of geographical limitations on the Program, which make it unsuited to the needs of many investors, are due not to legislative restrictions but to the fact that the Division has not so far been able to negotiate agreements instituting the Program with a number of important countries, particularly in Latin America and the Middle East. In addition to the special problems raised by the conflict of such agreements with the principles of the Calvo Doctrine, adhered to by a number of Latin American countries, there are several more general reasons for the difficulty in negotiating them. Many countries, although desiring foreign investment, fear foreign domination to such an extent that they regard potential U.S. Government claims to assets on their soil, as provided for in all guaranty agreements, as an unacceptable threat to their national sovereignty. Others fear that participation in the Program would be regarded as submission to United States leadership and treason to the cause of nationalism by their neighbors, and so are unwilling to be the first participants in their area. In such cases the completion of a treaty with one important country may make the institution of the Program with its neighbors much easier.

Procedural Problems

Procedural stumbling blocks to the negotiation of agreements also exist. Many constitutions require that the elected legislature approve such treaties. Even after a treaty is acceptable to diplomatic negotiators it may be delayed or vetoed by the lawmaking body, particularly if the country's popular nationalistic feelings have the anti-Western tinge so common in underdeveloped nations. Past experience indicates that the best way to negotiate a guaranty treaty is along with an agreement for United States military or economic aid. Once this chance is missed, as it has been several times, there may not be sufficient interest in the Guaranty Program itself to spur negotiation.

Finally, several countries to whom only one type of guaranty, generally that against expropriation, was objectionable, have refused to consider instituting the Program because they felt that it was being presented to them on an all-or-nothing basis.

Despite these difficulties, the Division has succeeded in instituting the Program with 22 countries, 20 of them non-European, since 1955 (see Table VI, p. 51). The 1957 signing of a convertibility agreement with India was regarded as particularly important, since it was expected to "ease the negotiating task with neighboring countries."⁶ The first guaranty agreement to be signed with an independent African nation was concluded with Ghana in 1958, while agreements with Sudan and Tunisia have been signed in 1959. As this record of accomplishment suggests, guaranty agreements at present allow for considerable variety. A continued or even increased emphasis on flexibility and adaptability to a given country's needs, particularly in the case of the peculiar problems of many Latin American countries, combined with the presentation of each type of guaranty as a separate option, should assist the geographical expansion of the Program.⁷

A number of procedural matters have also brought complaints from potential, actual, or past Program participants. The annual fees, reduced in 1954 from between 1 percent and 4 percent to one-half of 1 per cent for each guaranty, are still regarded as too high by about a third of the Program's participants, and were evidently the cause of a number of drop-outs.⁸ The complete lack of any actuarial basis for determining potential liability makes it impossible to tell whether the ratio of the accumulated-fee reserve to liabilities (\$4.0 million to \$369.8 million in mid-1959) is adequate or not. To a commercial insurance expert it would appear dangerously low; yet the fact that no claims have been made to date has led a number of investors to regard it as too high. The experience of the British Export Credits Guarantee Department shows clearly, however, that a substantial reserve fund of fees built up over a number of years free of claims can be wiped out by a single transfer crisis. A working capital of \$36

⁶ Testimony of Charles B. Warden, U.S. 85th Congress, 2nd Session, House Committee on Foreign Affairs, *Mutual Security Act of 1958, Hearings*, Washington, p. 1091.

⁷ While the Guaranties Division initiates action on a proposed treaty, it does not actually carry on negotiations. These are conducted by the local embassy or ICA mission under joint State Department-ICA instructions. However, it is the Division's responsibility to expedite these negotiations if they do not proceed smoothly.

⁸ The Harvard Business School study cites 68 percent of those who answered their questionnaire as saying the present rates were reasonable, while 32 percent termed them too high. However, very few (only ten) of the respondents to the 1958-1959 Commerce Department survey felt that the fees should be substantially reduced.

million, maintained from 1931 to 1952, was wiped out by Brazilian transfer claims and the Department had to have help from the Treasury to meet its commitments. In view of this, a further lowering of fees seems unwise, particularly if the Program wishes to avoid being regarded as a subsidy, while to raise them to provide a greater margin of safety would be to risk excluding a substantial number of potential users of guaranties. The income and expenses of the Program are shown in Table IX.

TABLE IX
Income and Expenses of the Investment Guaranty Program, 1958

<i>Income:</i>	
Fees collected—beginning of program through Dec. 31, 1958	\$3,445,239
Fees collected—12 months ending Dec. 31, 1958	1,165,915
Fees collected—previous 12-month period	564,659
Losses to Dec. 31, 1958	None
<i>Expense:</i>	
Operating Costs—current annual rate:	
ICA	122,000 ^a
Export-Import Bank	20,000
TOTAL	142,000 ^b

^a Includes (a) salaries of guaranty staff, (b) travel, (c) estimated salaries for legal and accounting support, and (d) \$23,500 overhead allowance.

^b Administrative costs were approximately 12 percent of fee income for calendar 1958. The previous year they were about 20 percent.

Source: International Cooperation Administration, Investment Guaranties Division.

It has often been suggested that the present system of uniform fees be replaced by a more equitable system of adjusting them according to the riskiness of the investment's location.⁹ While the risk of exchange stringency or expropriation clearly varies considerably from country to country, the administrative difficulties of making such differentiations would be difficult enough to interfere seriously with the efficient operation of the Program. Since no objective basis exists for any of the guaranty fees, such a system would inevitably produce

⁹ The Guaranties Division did initially attempt to vary its fees for the expropriation guaranty between 1 and 4 percent, depending upon the riskiness of the investment location. In October 1954 both convertibility and expropriation rates were reduced to a uniform one-half of 1 percent. The Division has recently tried to make better known to investors the standby arrangements which allow for considerable flexibility in annual adjustments within the maximum protection provisions of a guaranty contract. The basic fee of one-half of 1 percent is charged for protection afforded in the given year, and a standby fee of one-quarter of 1 percent for the difference between that amount and the maximum protection agreed upon in the contract.

a negative reaction among actual and potential participants in countries deemed high-risk areas. Furthermore, the countries so designated, especially in the case of expropriation, would unquestionably take offense, and the Program's efforts at geographical expansion would be severely impeded. Worse, it might thus hinder rather than aid United States efforts to establish and preserve friendly relations with underdeveloped nations. While the argument for varied rates is economically sound, in the absence of a reliable body of quantitative information on which differential rates could be based, the probable repercussions of such a system on the Program's effectiveness offer a more telling argument for retaining the present practice of charging uniform fees.

The considerable time which generally elapses between initial application and the signing of a guaranty contract has been cited as an obstacle to the Program's effectiveness, particularly since, in many cases, a project's profitability is largely dependent on getting there ahead of the competition. While in the early, one-man days of the Program's operation this delay was at least in part the responsibility of the Program's administrator, more recent episodes, since the enlargement of the Division and its considerable accumulation of experience, indicate that slow processing is generally due either to delays in the investor's own planning or in his obtaining approval of his proposal from the appropriate foreign government. Several investors have said that the Program would be more interesting to them if the requirement of foreign government approval were abandoned. But this would require the renegotiation of all bilateral agreements instituting the Program, and such a change would certainly be unacceptable to many participating countries. Furthermore, the prior approval of a host government provides a considerable measure of insurance to the U.S. Government, which becomes liable in the event of hostile action by such government, and actions by host governments leading to claims would be far more likely to occur if guaranteed investments were made without their approval. From the point of view of the Program's long-run effect and service to the government and the business community, these arguments in favor of retaining the requirement for the host government's approval outweigh considerations of the time and trouble thereby incurred by the guaranty applicant.

V. CONCLUSION: A LIMITED INSTRUMENT IN AN AGE OF COMPROMISE

ASIDE from the specific and probably reducible problems reviewed in the last chapter, the Investment Guaranty Program suffers from a number of limitations inherent in its very nature. Like the investment treaty approach surveyed in Chapter I, it can reflect but not create the consensus essential to a mutually profitable investment relationship; the signing of a bilateral treaty instituting the Program is less an instrument for creating a favorable investment climate than a guidepost indicating the areas where such a climate now exists. Because of this fact, there is a core of truth in the criticism, quoted earlier, that where such guaranties are most needed they cannot be obtained and where they are available the risk situation is such that investment would be possible even without them.¹ But this is to see the world in black and white and to ignore the "shades of grey" with which many of the statesmen of the underdeveloped world consciously associate themselves. It is quite possible that a country would be willing to sign an agreement spelling out regularized procedures to be followed in the event of action resulting in the payment of guaranty claims and yet, under conditions of stress and with perhaps a government of a more radical political complexion in power, to take such action. This is particularly true with reference to convertibility blockage, for in cases of extreme exchange stringency such action may appear to even the most foreign investment-sensitive government as the least of the possible evils.

Nor, of course, can the Program ever offer a risk coverage broad enough for maximum effectiveness. The line between "commercial" and "political," between "ordinary" and "special," business risk is fuzzy indeed, and long before the majority of American businessmen were convinced that foreign and domestic business risk had been "equalized" by such insurance, the concept of private enterprise would have become a sham and the point of "private investment at public risk" such as was openly practiced in the 19th century, would have been reached. The U.S. Government walks a fine line in its efforts to encourage but not subsidize, to influence but not regulate, private investment, and it always runs the risk that in its efforts to avoid the latter it may fail in the former, as happened with the State Department's policy of "scrutiny and advice but not control" with respect

¹ Above, pp. 59-60.

to transactions in foreign securities on American markets during the 1920's.² The Guaranty Program is a novel effort in a tradition which has always run the risk of failure because it did not go far enough.

Even disregarding the above limitations, the Guaranty Program, like any form of insurance, is at best a negative form of incentive; it can operate only where possibilities of substantial profits and considerable freedom of control already exist. To think of success in terms of the sudden release of a large flood of foreign investment clearly attributable in a large measure to the existence of the Program is to require too much of this instrument or, indeed, of any incentive measure yet devised which does not grossly violate considerations of equity and of the inseparability of risk and profit in an entrepreneurial society. For this reason one can accept the evidence that only in a minority of cases has the availability of government guaranties been the pivotal factor in a foreign investment decision without therefore dismissing the Program as ineffective. Indeed, it would probably be difficult, if not impossible, to isolate such a single decisive factor in a majority of executive decisions; generally a number of factors combine to determine the weight of the evidence for or against a decision, and it is quite enough that the availability of guaranties is among them.

Guaranties and the Growth of Foreign Investment

Private investment abroad by United States citizens and the use of the Investment Guaranty Program exhibited a noticeably parallel pattern of development in the decade after World War II. Each continued along at a discouragingly low level for a number of years and then, quite suddenly, entered upon a period of rapid increase that shows every sign of continuing. The net outflow of private capital hovered between \$500 million and \$850 million annually through 1955 and then, in 1956, leapt to \$1,839 million.³ The 1957 figure was even higher and, while the 1958 recession brought a substantial dip, the indications are that the trend of growth has been resumed in 1959.

² Herbert Feis, *The Diplomacy of the Dollar*, Baltimore, 1950, p. 7, describes the government's behavior: "Thus the Government found itself watching, then asking questions, then commenting, and then advising, for and against. But always with caution and restraint. For it was afraid that it might be smacked for interfering with private affairs and brought to book for mistakes." The results of the "caution and restraint" became clear amidst the international financial chaos of the early 1930's.

³ Figures for gross private capital outflow would be more appropriate for measuring the increase in private dollar investment abroad, but these are not directly available in Commerce Department statistics.

The Guaranty Program figures began their climb slightly before those for foreign investment as a whole. They had reached, by slow degrees, a cumulative total of \$49 million in 1954, by 1955 had nearly doubled to \$95 million, increased to \$225 million in 1957, and then exhibited a truly spectacular spurt to \$400 million by the end of 1958. It would be tempting to seek some cause-and-effect relationship between these nearly contemporaneous developments, but it would be hard to claim that the \$46 million increase in guaranties during one year could have been a significant factor in the more than \$1 billion increase in foreign investment during the next, and the year of the Program's greatest growth was the only one in the recent past during which annual direct private investment outflow declined. But proof of such a relationship is not necessary; the recent spurt of foreign investment is alone strong indication that, after ten years' stagnation, world conditions and American business attitudes are once again favorable to a situation in which United States capital and its accompaniments are an important factor in the development of foreign economies. And the parallel growth in the utilization of investment guaranties, particularly noticeable recently in underdeveloped countries, seems proof that in a period of expanding investment by our industrialized economy in the less developed ones, government guaranties will have an increasingly significant role to play.

Official emphasis on the need for American participation in foreign economic development has also been intensified. Among the evidences of this concern are: the substantial increases in United States funds committed to the International Bank for Reconstruction and Development and the International Monetary Fund; strong governmental support of Senator Monroney's proposal for an International Development Corporation to make loans, largely in local currencies, on considerably easier terms than the World Bank; the President's public commitment to United States financial aid for Arab and Latin American development banks; and the Commerce Department's consideration of a proposal to conduct a comprehensive worldwide study of the role of United States foreign investment.

The above activities indicate not only an increased governmental recognition of American capital's role in the advancement of less developed economies, but also a new cognizance of the complementary relationship between public and private investment in these areas. In a sense, they suggest a renewed reliance on unilateral capital transfers, though in the form of "soft" loans rather than of grants; a realization that private investment cannot yet do the job alone in under-

developed areas. But American interest in maximizing the contribution of private capital to the flow of real resources to less developed nations remains undiminished. And in this area government guaranties can play an increasing role. For as public capital assistance fosters economic growth to a point where these nations are ready for the "take off" into self-sustained development, a transition period is very likely to appear, when economies can be gradually weaned from a reliance on foreign assistance but still need considerable outside resources and are not yet able to attract unsupported foreign capital entirely on their own merits. It is in just such a time of transition that government guaranties can be most useful, and the greatly increased utilization of such guaranties in less developed countries during the last few years indicates that a number of these nations have already entered that phase of development.

The \$448 million of guaranteed investments is significant, not only relative to past figures, but absolutely, when seen from the viewpoint of a small, less developed nation whose gross national product may well be one-hundredth or one-thousandth of our own. The total sum of guaranties issued hardly looms large in the United States' overall foreign investment figures; much less so does even the largest single guaranteed investment. But such an investment may make a crucial difference to the development of a host country's economy, and what is marginal in our terms may be central in theirs.

Assuming then, that investment insurance does have an important role to play in the United States' intentions of participation in the economic development of other countries, it is important to emphasize the necessarily public nature of such an undertaking. For a number of reasons, private insurance of this nature would be a practical impossibility. Lack of actuarial experience with this type of risk, combined with the enormous potential liability, would force a commercial insurer to charge prohibitively high rates. The preventive function of government insurance, discussed in Chapter I, would be lost. A private company would not be able to utilize the local currency acquired after payment of a convertibility claim, as the government can, nor would it have at its disposal the diplomatic and other resources available to our government in negotiations regarding the realization of assets following payment under an expropriation guaranty. These considerations, plus the fact that no private company can have the staying power which the government could exercise in unfavorable situations, would increase the necessary reserves still further.

That this view is shared by influential segments of the business community is evident in the American Enterprise Association's statement that "It seems clear, however, that private enterprise cannot provide insurance against these risks and that the Federal Government is not displacing private activity in this regard,"⁵ as well as by Standard Oil of New Jersey's opinion "that its investments conceivably could absorb most of a private group's guarantying ability."⁶ Except in the cases of firms whose size and geographical dispersion of investments serve as adequate self-insurance and of others whose long experience in a given country, or the size and importance of their investments to the hosts' economies, enables them to negotiate such special arrangements as that between the Standard Vacuum Oil Company and the Government of India,⁷ the function of providing foreign investment insurance must clearly be provided by the government if it is to be provided at all.

Guaranties versus Alternative Approaches

Among the chief methods of private investment stimulation now being pursued by the U.S. Government, the guaranty approach has the advantage of being easier to negotiate and providing more security to the private investor than the investment treaty approach, and of being more equitable, less expensive, more selective and partaking less of the nature of an outright subsidy than any type of general tax incentive. All this does not mean, of course, that reliance should be placed on the Guaranty Program to the detriment of other governmental efforts, nor has the growth of the Program brought any lessening of emphasis on the negotiation of investment and modernized Friendship, Commerce, and Navigation treaties, on the provision of diplomatic assistance to foreign investors abroad and of information and advice to potential foreign investors at home, and on the search for an equitable, selective form of tax inducement for foreign investment. We have said that the Guaranty Program alone cannot be expected to stimulate a startling increase in the outflow of American private funds; the discussion in Chapter I indicates that no other single instrument now in use or contemplated has much chance of doing so either.

⁵ U.S. 85th Congress, 1st Session, Senate Special Committee to Study the Foreign Aid Program, *American Enterprise, Foreign Economic Development, and the Aid Programs*, Committee Print, Washington, 1957, p. 56.

⁶ Peter Strauss et al., *The Investment Guaranty Program*, Cambridge, Mass., 1958, p. 44.

⁷ See footnote 29, p. 14.

It is only by utilizing all these instruments together, and by combining them with an effort to convince underdeveloped countries to develop a favorable attitude toward foreign investment and with a judicious provision of loan funds to build up underdeveloped economies to the point where they can attract such investment, that the government's economic policy objectives for these areas can be given maximum support. The era of "complete protection," if it ever existed, is past; "battleship diplomacy" and "public investment at private risk" are no longer acceptable to the overwhelming majority of the peoples of the free world and more limited instruments, compensating in variety and flexibility for their lack of "total effectiveness," must take their place. Even in such an important effort as the assurance of the development of less-developed economies in a framework of political and economic freedom, a government must compromise between its desire, and power, to make its will effective, and the knowledge that too much interference will alienate either the business community at home or statesmen abroad, or perhaps both, and thus defeat its own ends. In an era when the most powerful government must make use of limited instruments to achieve its aims, and when a recognition of the need for constructive compromise often offers the best proof against failure, the growing Investment Guaranty Program of the ICA is a particularly suitable device.

APPENDIX A

Legislation Pertaining to the ICA Investment Guaranty Program As of June 30, 1959

Section 413 (b) of the Mutual Security Act of 1954 (Public Law 665, 83rd Congress) as Amended by the Mutual Security Act of 1956 (Public Law 726, 84th Congress), by the Mutual Security Act of 1958 (Public Law 85-477, 85th Congress), and by the Mutual Security Act of 1959 (Public Law 86-108, 86th Congress).

* * * * *

Section 413 (b) In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President . . .

Section 413 (b) (4) may make, through an agency responsible for administering nonmilitary assistance under this Act, until June 30, 1967, under rules and regulations prescribed by him, guaranties to any person of investments in connection with projects, including expansion, modernization, or development of existing enterprises, in any nation with which the United States has agreed to institute the guaranty program:

Provided, That —

- (A) such projects shall be approved by the President as furthering the development of the economic resources and productive capacities of economically underdeveloped areas or, in the case of guaranties issued prior to January 1, 1960, on the basis of applications submitted prior to July 1, 1959, any of the purposes of this Act, and by the nation concerned;
- (B) the guaranty to any person shall be limited to assuring any or all of the following:
 - (i) the transfer into United States dollars of other currencies, or credits in such currencies, received by such person as earnings or profits from the approved project, as repayment or return of the investment therein, in whole or in part, or as compensation for the sale or disposition of all or any part thereof;
 - (ii) the compensation in United States dollars for loss of all or any part of the investment in the approved project which shall be found by the President to have been lost to such

person by reason of expropriation or confiscation by action of the government of a foreign nation or by reason of war;

- (C) when any payment is made to any person pursuant to a guaranty as hereinbefore described, the currency, credits, assets, or investment on account of which such payment is made shall become the property of the United States Government, and the United States Government shall be subrogated to any right, title, claim or cause of action existing in connection therewith;
- (D) the guaranty to any person shall not exceed the amount of dollars invested in the project by such person with the approval of the President plus actual earnings or profits on said project to the extent provided by such guaranty, and shall be limited to a term not exceeding twenty years from the date of issuance;
- (E) a fee shall be charged in an amount not exceeding 1 per centum per annum of the amount of each guaranty under clause (i) of sub-paragraph (B), and not exceeding 4 per centum of the amount of each guaranty under clause (ii) of such subparagraph, and all fees collected hereunder shall be available for expenditure in discharge of liabilities under guaranties made under this section until such time as all such liabilities have been discharged or have expired, or until all such fees have been expended in accordance with the provisions of this section: *Provided*, That in the event the fee to be charged for a type of guaranty is reduced, fees to be paid under existing contracts for the same type of guaranty may be similarly reduced;
- (F) The President is authorized to issue guaranties up to a total face value of \$1,000,000,000 exclusive of informational media guaranties heretofore and hereafter issued pursuant to section 1011 of the Act of January 27, 1948, as amended (22 U.S.C. 1442), and section 111 (b) (3) of the Economic Cooperation Act of 1948, as amended (22 U.S.C. 1509 (b) (3)): *Provided*, That any funds allocated to a guaranty and remaining after all liability of the United States assumed in connection therewith has been released, discharged, or otherwise terminated, and funds realized after June 30, 1955, from the sale of currencies or other assets acquired pursuant to subparagraph (C), shall be available for allocation to other guaranties, and the foregoing limitation shall be increased to the extent that such funds become available. Any payments made to discharge liabilities

under guaranties issued under this paragraph shall be paid out of fees collected under subparagraph (E) as long as such fees are available, and thereafter shall be paid out of funds realized from the sale of currencies or other assets acquired pursuant to subparagraph (C) and notes which have been issued under authority of paragraph 111 (c) (2) of the Economic Cooperation Act of 1948, as amended, and authorized to be issued under this paragraph by the Director of the International Cooperation Administration or such other officer as the President may designate, when necessary to discharge liabilities under any such guaranty: *Provided*, That all guaranties issued after June 30, 1956, pursuant to this paragraph shall be considered for the purposes of sections 3679 (31 U.S.C. 665) and 3732 (41 U.S.C. 11) of the Revised Statutes, as amended, as obligations only to the extent of the probable ultimate net cost to the United States of such guaranties; and the President shall, in the submission to the Congress of the reports required by section 534 of this Act, include information on the operation of this paragraph: *Provided further*, that at all times funds shall be allocated to all outstanding guaranties issued prior to July 1, 1956, exclusive of informational media guaranties issued pursuant to section 1011 of the Act of January 27, 1948, as amended (22 U.S.C. 1442), and section 111 (b) (3) of the Economic Cooperation Act of 1948, as amended, equal to the sum of the face value of said guaranties. For the purpose of this paragraph the Director of the International Cooperation Administration or such other officer as the President may designate is authorized to issue notes (in addition to the notes heretofore issued pursuant to paragraph 111 (c) (2) of the Economic Cooperation Act of 1948, as amended) in an amount not to exceed \$37,500,000, and on the same terms and conditions applicable to notes issued pursuant to said paragraph 111 (c) (2);

- (G) the guaranty program authorized by this paragraph shall be used to the maximum practicable extent and shall be administered under broad criteria so as to facilitate and increase the participation of private enterprise in furthering the development of the economic resources and productive capacities of economically underdeveloped areas or, in the case of guaranties issued prior to January 1, 1960, on the basis of applications submitted prior to July 1, 1959, any of the purposes of this Act;
- (H) as used in this paragraph . . .

- (i) the term "person" means a citizen of the United States or any corporation, partnership, or other association created under the law of the United States or of any State or Territory and substantially beneficially owned by citizens of the United States, and
- (ii) the term "investment" includes any contribution of capital goods, materials, equipment, services, patents, processes, or techniques, by any person in the form of (1) a loan or loans to an approved project, (2) the purchase of a share of ownership in any such project, (3) participation in royalties, earnings, or profits of any such project, and (4) the furnishing of capital goods items and related services pursuant to a contract providing for payment in whole or in part after the end of the fiscal year in which the guaranty of such investment is made.

APPENDIX B

Investment Guaranties Issued: 1948-1959 (June 30)

<i>Investor</i>	<i>Product</i>	<i>Convertibility</i>	<i>Expropriation</i>
AUSTRIA:			
Socony-Mobil Oil Co., Inc.	Oil Distribution	\$ 1,000,000	\$ 1,000,000
Syntron Company	Vibratory Equipment	30,000	—
TOTAL		<u>1,030,000</u>	<u>1,000,000</u>
BELGIUM:			
The Cowles Dissolver Co. Inc.	Grinding & mixing equip.	30,000	30,000
Morehouse Industries, Inc.	Grinding & mixing equip.	30,000	30,000
Smith-Corona, Inc.	Typewriters	72,000	60,000
TOTAL		<u>132,000</u>	<u>120,000</u>
BOLIVIA:			
Big Chief Drilling Co.	Oil exploration and drilling	500,000	2,000,000
Big Chief Drilling Co.	Oil exploration and drilling	—	2,000,000
South American Placers, Inc.	Gold dredging	—	3,000,000
TOTAL		<u>500,000</u>	<u>7,000,000</u>
CHINA:			
Von Kohorn Internat. Corp.	Manufacture of rayon	1,059,242	959,242
Von Kohorn Internat. Corp.	Manufacture of rayon	72,000	100,000
Westinghouse Elec. Intl. Co.	Electric generating equip.	2,140,320	1,881,600
TOTAL		<u>3,271,562</u>	<u>2,940,842</u>
DENMARK:			
Ray-o-Vac Intl., Inc.	Leakproof batteries	182,500	—
ECUADOR:			
W. R. Grace & Co.	Paints & chemicals	252,945	—
FRANCE:			
Armstrong Paint & Varnish Co.	Paints and varnishes	12,000	—
Chicago Molded Products	Plastics	35,000	—
Godfrey L. Cabot, Inc.	Carbon black	4,430,000	2,215,000
Godfrey L. Cabot, Inc.	Carbon black	4,400,000	2,215,000
Chrysler Corporation	Trucks and cars	920,108	—
Chrysler Corporation	Trucks and cars	6,987,310	3,493,655
Clark Equipment Co.	Materials handling equip.	479,250	—
Concrete Chemicals Co.	Concrete admixes	90,000	—
Corhart Refractories Co. Inc.	Refractories	70,000	—
Dana Corporation	Automotive parts	200,000	—
Dennis, John K.	Plastics	4,070	4,070
Dow Corning Corporation	Silicones	304,950	—
Dow Corning Corporation	Chemicals	591,450	—
Ellicott Machine Corporation	Dredges	40,214	20,107
Ellicott Machine Corporation	Dredges	34,132	17,066
Ford Motor Company	Auto products	—	713,875
Foster Wheeler Corporation	Construction engineering	213,500	—
Foster Wheeler Corporation	Construction engineering	172,500	—
Fruehauf Trailer Co.	Truck Trailers	437,500	—
Guthery, Frank F.	Spotwelding	15,000	15,000
Harshaw Chemical Co. (add'l)	Ceramic colors	100,000	100,000
Harshaw Chemical Co.	Ceramic colors	200,000	100,000
Heyden Chemical Corp.	Streptomycia	300,000	—
Hohenstein, Walter P.	Polystyrene	56,000	—

<i>Investor</i>	<i>Product</i>	<i>Convertibility</i>	<i>Expropriation</i>
FRANCE (continued)			
Houdry Process Corporation	Petroleum refining	202,000	—
J. M. Huber Corp.	Silicate pigments	50,000	—
Huppert, Peter	Plastics	4,070	4,070
International Water Corp.	Water wells	51,000	—
Koppers Company	Styrene monomer	465,000	—
Lincoln Electric Co.	Welding materials	1,072,636	—
Lincoln Electric Co.	Welding equipment	3,211,000	—
Marmon-Herrington Co., Inc.	Transportation vehicles	54,860	27,430
Morrison-Knudsen Co., Inc.	Construction engineering	252,000	—
National Fastener Corp.	Slide fasteners	17,500	—
New Britain Machine Co.	Machine tools	1,000,000	1,000,000
Olin Mathieson (French West Africa)	Bauxite mining and alumina production	—	32,000,000
Omaf (French West Africa)	Bauxite mining and alumina production	—	40,000,000
Rohm & Haas Co.	Agriculture fungicides	441,100	—
Ronson Corporation	Lighters & related products	400,000	400,000
Singer Manufacturing Co.	Sewing machines	717,000	—
Standard Oil Development Co.	Oil refinery	550,000	—
Standard Oil Development Co.	Oil refinery	504,000	—
Yoder Co.	Metal-working machinery	204,500	—
TOTAL		29,289,650	82,325,273
GERMANY:			
Bostitch, Inc.	Staplers	150,000	150,000
Godfrey L. Cabot, Inc.	Carbon black	1,000,000	—
Clevite Corporation	Electronic products	37,792	37,792
Clevite Corporation	Electronic products	274,877	274,876
Firestone Tire & Rubber Co.	Tires and tubes	1,841,700	1,052,400
Ford Motor Company	Trucks and automobiles	—	8,314,863
Ford Motor Company	Trucks and automobiles	—	9,593,062
Ford Motor Company	Trucks and automobiles	—	8,889,384
Gardner-Denver Company	Mine carloaders	140,000	—
W. R. Grace & Co.	Sealing compounds	203,000	—
W. R. Grace & Co. (add'l)	Food preserving bags	400,000	—
Harris Intertype Corp.	Paper cutters	355,105	177,552
E. F. Houghton & Company	Chemicals and lubricants	93,150	—
Johns-Manville Company	Asphalt tile	350,000	—
Marchant Calculators, Inc.	Business machines	95,120	95,120
Mine Safety Appliance Co.	Safety appliances	1,250,000	1,250,000
National Aluminate Corp.	Water treating chemicals	1,298,000	50,000
Olin Mathieson Chem. Corp.	Powder actuated tools	571,428	—
Olin Mathieson Chem. Corp.	Powder actuated tools	91,875	91,875
Olin Mathieson Chem. Corp.	Powder actuated tools	369,048	184,524
Oppenheimer Casing Co.	Animal sausage casings	20,805	10,402
Oppenheimer Casing Co.	Animal sausage casings	106,144	106,144
Otis Elevator Company	Elevators & elevator equip.	—	250,831
Perkins-Elmer Corporation	High precision instruments	548,230	274,115
Raytheon Manufacturing Co.	Radar & sonar equipment	93,500	—
Rockwell Mfg. Co.	Power tools	—	964,000
Rockwell Mfg. Co.	Power tools	—	2,450,000
Rockwell Mfg. Co.	Power tools	—	58,800
Rockwell Mfg. Co.	Small motors, valves, etc.	—	959,600
Ronson Corporation	Lighters & related products	250,000	250,000
Ronson Corporation	Lighters & related products	214,375	198,625

<i>Investor</i>	<i>Product</i>	<i>Convertibility</i>	<i>Expropriation</i>
GERMANY (continued)			
J. Sklar Manufacturing Co.	Optical equipment	10,000	—
J. Sklar Manufacturing Co.	Tool manufacturing	—	10,000
Smith-Corona Marchant, Inc.	Office machines	97,400	48,700
The Coleman Company	Space heaters	100,000	50,000
Union Twist Drill Company	Drills & other tools	1,397,204	1,397,204
Union Twist Drill Company	Drills & other tools	1,495,000	1,495,000
Union Twist Drill Company	Drills & other tools	230,230	174,790
TOTAL		13,083,983	38,859,659
GREECE:			
Dresser Industries	Barite mining	594,700	595,000
GUATEMALA:			
Farmen & Son Logging Co.	Logging operation	177,000	177,000
Farmen, Oliver	Logging operation	70,000	70,000
The Goodyear Tire & Rubber Co.	Rubber & rubber products	—	100,000
The Goodyear Tire & Rubber Co.	Rubber & rubber products	—	1,900,000
Koppers Co., Inc.	Timber operation	—	325,000
R. J. Noble Company	Sand & gravel operation	200,000	200,000
TOTAL		447,000	2,772,000
INDIA:			
Johnson & Johnson	Surgical dressings	756,000	—
Merck & Co., Inc.	Pharmaceuticals	5,040,000	—
Otis Elevator Co.	Elevators	460,000	—
TOTAL		6,256,000	—
IRAN:			
The B. F. Goodrich Co.	Rubber tubes and tires	3,080,000	3,080,000
The B. F. Goodrich Co.	Rubber tubes and tires	1,450,000	1,120,000
The B. F. Goodrich Co.	Rubber tubes and tires	6,000,000	2,000,000
TOTAL		10,530,000	6,200,000
ITALY:			
American Home Prod. (add'l)	Pharmaceuticals	288,000	288,000
American Home Prod. Corp.	Pharmaceuticals	1,082,350	640,572
American Home Prod. Corp.	Pharmaceuticals	475,000	300,000
American Home Prod. Corp.	Pharmaceuticals	480,000	240,000
American Home Prod. Corp.	Pharmaceuticals	1,152,000	576,000
American Home Prod. Corp.	Drugs and drug products	240,000	200,000
American Motels of Italy	Motels	195,000	172,500
Associated Seed Growers, Inc.	Seed cultivation	87,500	150,000
Associated Seed Growers, Inc.	Seed cultivation	340,000	340,000
Don Baxter	Intravenous solutions	29,190	29,190
Caltex Oil Products Company	Oil refinery	4,630,000	—
Chicago Molded Products	Plastics	35,000	—
W. R. Grace & Co.	Sealing compounds	107,700	—
W. R. Grace & Co.	Sealing compounds	107,688	—
Houdry Process Corporation	Petroleum refining	75,000	—
E. F. Houghton & Company	Chemicals & lubricants	17,000	—
Mine Safety Appliances Co.	Safety appliances & equip.	87,750	43,875
Monsanto Chemical Co.	Chemicals	42,000,000	22,000,000
M.S.A. Financing Corp.	Safety appliances & equip.	2,250	1,125
National Aluminate Corp.	Boiler compounds	1,331,000	271,000

<i>Investor</i>	<i>Product</i>	<i>Convertibility</i>	<i>Expropriation</i>
ITALY (continued):			
National Biscuit Company	Biscuits and crackers	900,000	—
Olin Mathieson Chemical Co.	Industrial chemicals	8,551,800	4,275,900
Olin Mathieson Chemical Co.	Industrial chemicals	2,500,000	—
Otis Elevator Company	Elevators & elevator equip.	192,500	—
Joseph Pacifico	Building stone	20,000	—
Pennsalt Chemicals Corp.	Refrigerants, aerosol propel- lants and chemicals	375,000	375,000*
Raytheon Manufacturing Co.	Electronic tubes	329,000	—
The Smyth Manufacturing Co.	Bookbinding equipment	67,440	67,440
The Smyth Manufacturing Co.	Bookbinding equipment	33,851	33,852
Socony-Mobil Oil Co., Inc.	Oil refinery	5,600,000	2,800,000
Socony-Mobil Oil Co., Inc.	Cracking unit	7,234,000	3,617,000
Standard Oil Co. (N.J.)	Oil refinery	14,487,500	—
Syntron Company	Vibratory equipment	36,000	—
The Torrington Co.	Steel needles	2,300,000	—
Westinghouse Air Brake Co.	Railroad equipment	60,300	—
	TOTAL	95,449,819	36,421,454
JAPAN:			
Dow Chemical Intern'l Ltd.	Production of plastics	560,000	560,000
Dow Chemical Intern'l Ltd.	Production of plastics	812,000	812,000
Hamilton Watch Co.	Watches	500,000	50,000
	TOTAL	1,872,000	1,422,000
JORDAN:			
Edwin W. Pauley & Phillips Petroleum Co.	Oil exploration	—	6,000,000
Robert L. Parker	Petroleum exploration equip.	—	1,250,000
	TOTAL	—	7,250,000
THE NETHERLANDS:			
A-P Controls Corporation	Oil heater regulators	75,000	50,000
American Home Prod. Corp.	Pharmaceuticals	210,000	105,000
Dow Chemical Company	Chemicals	2,640,000	1,320,000
Henry Drake	Writing fluids	29,750	17,000
H. J. Baker Brothers	Castor oil derivatives	16,085	19,800
H. H. Sonnenberg	Venetian blinds	175,000	—
Louis E. Stahl	Chemical finishes	—	50,000
Kresno-Stamm Mfg. Co.	Oil burners	70,000	—
Kresno-Stamm Mfg. Co.	Oil burners	20,000	—
Sparkler International, Ltd.	Industrial filters	16,488	—
Tokheim Oil Tank & Pump Co.	Oil tanks and pumps	350,000	200,000
United Greenfield Tap & Die	Drills and other tools	52,512	26,256
United Greenfield Tap & Die	Drills and other tools	1,590,000	795,000
	TOTAL	5,244,835	2,583,056
PAKISTAN:			
General Mills	Food processing	480,000	315,000
PARAGUAY:			
Pure Oil Co. of Paraguay, Inc. (Williams Bros. Corp.) (Sinclair Paraguayan Oil Co.) (Tidewater Oil Co.) (Paraguay Gulf Oil Co.)	Exploration and exploitation for oil	—	3,000,000

<i>Investor</i>	<i>Product</i>	<i>Convertibility</i>	<i>Expropriation</i>
PERU:			
General Foods Corporation	Food processing	50,000	—
General Foods Corporation	Food processing	74,000	—
Kellog Credit Corporation	Telephone service	8,220,468	—
TOTAL		8,344,468	—
PHILIPPINES:			
Consolidated Dairy Prod. Co.	Dairy Products	660,000	—
Phelps Dodge Corporation	Metal ores and alloys	357,000	765,000
Phelps Dodge Corporation	Metal ores and alloys	—	293,250
Rheem Manufacturing Co.	Metal drums	200,000	250,000
The B. F. Goodrich Company	Tires and tubes	792,000	1,200,000
The B. F. Goodrich Company	Tires and tubes	1,500,000	792,000
The B. F. Goodrich Company	Tires and tubes	1,200,000	—
TOTAL		4,709,000	3,300,250
THAILAND:			
Harry F. R. Dolan	Tapioca rice	49,400	100,000
Harry F. R. Dolan	Tapioca rice	50,000	50,000
Internat'l Dairy Engineering	Dairy products	207,500	207,500
TOTAL		306,900	357,500
TURKEY:			
Bank of America	Hotel furnishings	1,049,600	—
Federal Motor Truck Co.	Trucks & vehicles parts	187,339	—
General Electric Co., Inc.	Electrical products	137,500	—
Goodyear International Corp.	Tires and retreading	40,000	—
Marshall Oil & Chemical Co.	Waste Oil Refinery	84,000	—
Marshall Oil & Chem. Co. (additional)	Resin base and varnish	59,000	—
Olin Mathieson Chem. Corp.	Pharmaceuticals	96,863	—
Olin Mathieson Chem. Corp.	Pharmaceuticals	2,711,450	—
TOTAL		4,365,752	—
UNITED KINGDOM:			
Barber-Green Company	Construction machinery	47,565	—
Brown & Sharpe Mfg. Co.	Machine tools	1,400,000	—
Brown & Sharpe Mfg. Co.	Machine tools	1,400,000	—
Brown & Sharpe Mfg. Co.	Machine tool repairs	1,120,000	—
Brown & Sharpe Mfg. Co.	Machine tools	560,000	—
Godfrey L. Cabot, Inc.	Carbon black	2,025,000	—
Chicago Molded Products	Plastics	70,000	—
Cincinnati Shaper Co.	Machine tools	1,008,000	—
Cincinnati Shaper Co.	Machine tools	985,000	—
Cone Automatic Machine Co.	Automatic screw machines	262,500	—
Cone Automatic Machine Co.	Machine tools and parts	1,675,000	—
Cooper Alloy Foundry Co.	Stainless steel valves	153,500	—
Dictaphone Corporation	Dictaphones	350,000	—
Drilling & Exploration Co.	Drilling for oil and gas	420,000	—
Euclid Road Machinery Co.	Earth moving equipment	857,500	—
General Times Instrument Corp.	Clocks and watches	1,000,000	—
W. R. Grace & Co. (<i>Trinidad</i>)	Chemical fertilizer	17,729,125	—
Jacobs Mfg. Co.	Drill chucks	650,350	—
Knott Hotels Corporation	Hotel operations	1,436,100	—
Knott Hotels Corporation	Hotel operations	1,300,000	—
Kraft Foods	Food processing	1,379,514	—

<i>Investor</i>	<i>Product</i>	<i>Convertibility</i>	<i>Expropriation</i>
Kraft Foods	Food processing	1,278,457	—
Landis Tool Co.	Precision grinding machines	4,600,000	—
Lapointe Machine Tool Co.	Machine tools	53,365	—
Ledgehill International, Inc. (<i>Jamaica</i>)	Paint and related products	56,000	—
Leeds & Northrup Company	Control instruments	392,000	—
Metallizing Eng. Co., Inc.	Metal spray equipment	103,750	—
McGraw-Hill Internat'l Corp.	Publishing	40,000	—
Mine Safety Appliance Co.	Miners lamps	250,000	—
Minneapolis-Honeywell Reg. Co.	Regulating instruments	300,000	—
Parke, Davis & Company	Pharmaceuticals	735,000	—
Pocket Books, Inc.	Publishing	218,750	—
Preferred Utilities Mfg. Co.	Oil burners	60,000	—
S. F. Appliances	Home appliances	49,000	—
E. R. Squibb & Sons	Pharmaceuticals	981,750	—
Standard Brands, Inc.	Soluble coffee	75,000	—
The Haloid Company	Photocopying	3,000,000	—
Universal Oil Products	Catalyst for petroleum refin.	750,000	—
	TOTAL	48,792,226	\$196,462,034
	GRAND TOTALS	\$235,135,340	—
Total of Convertibility and Expropriation Contracts:		<u>\$431,597,374</u>	
Cancellations and Expirations:		<u>\$ 78,884,860</u>	
Maximum outstanding liability as of June 30, 1959:		<u>\$352,712,514</u>	

Source: International Cooperation Administration, Investment Guaranties Division.

APPENDIX C

DRAFT NOTE WHICH MAY BE USED TO INSTITUTE INVESTMENT GUARANTY PROGRAM (COVERING CONVERTIBILITY, EXPROPRIATION AND WAR RISK GUARANTIES)

Excellency:

I have the honor to refer to conversations which have recently taken place between representatives of our two Governments, relating to guaranties authorized by Section 413 (b) (4) of the Mutual Security Act of 1954, as amended. I also have the honor to confirm the following understanding reached as a result of these conversations:

1. The Government of _____ and of the United States of America will, upon the request of either of them, consult respecting projects in _____ proposed by nationals of the United States of America with regard to which guaranties under Section 413 (b) (4) of the Mutual Security Act of 1954, as amended, have been made or are under consideration.

2. The Government of the United States of America agrees that it will issue no guaranty with regard to any project unless it is approved by the Government of _____.

3. With respect to such guaranties extending to projects which are approved by the Government of _____ in accordance with the provisions of the aforesaid Section 413 (b) (4), the Government of _____ agrees:

- a. That if the Government of the United States of America makes payment in United States dollars to any person under any such guaranty, the Government of _____ will recognize the transfer to the United States of America of any right, title, or interest of such person in assets, currency, credits, or other property on account of which such payment was made and the subrogation of the United States of America to any claim or cause of action, or right of such person arising in connection therewith.
- b. That (*local currency unit*) amounts acquired by the Government of the United States of America pursuant to such guaranties shall be accorded treatment not less favorable than that accorded to private funds arising from transactions of United States nationals which are comparable to the transactions covered by such guaranties, and that such (*local currency unit*) amounts will be freely

available to the Government of the United States of America for administrative expenditures.

- c. That if the Government of the United States of America issues guaranties to cover losses by reason of war with respect to investments in _____ the Government of _____ agrees that nationals of the United States of America to whom such guaranties have been issued, will be accorded by the Government of _____ treatment no less favorable than that accorded, in like circumstances, to its nationals or nationals of third countries, with reference to any reimbursement, compensation, indemnification, or any other payment, including the distribution of reparations received from enemy countries, that the Government of _____ may make or pay for losses incurred by reason of war; if the Government of the United States of America makes payment in U.S. dollars to any national of the United States of America under a guaranty for losses by reason of war, the Government of _____ will recognize the transfer to the United States of America of any right, privilege, or interest, or any part thereof, that such nationals may be granted or become entitled to as a result of the aforementioned treatment by the Government of _____.
- d. That any claim against the Government of _____ to which the Government of the United States of America may be subrogated as a result of any payment under such a guaranty, shall be the subject of direct negotiations between the two Governments. If within a reasonable period, they are unable to settle the claim by agreement, it shall be referred for final and binding determination to a sole arbitrator selected by mutual agreement. If the Governments are unable, within a period of three months, to agree upon such selection, the arbitrator shall be one who may be designated by the President of the International Court of Justice at the request of either Government. This sub-paragraph d., shall not be applicable to the type of guaranties provided for in sub-paragraph c., immediately above.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of _____, the Government of the United States of America will consider that this note and your reply thereto constitute an agreement between the two Governments on this subject, the agreement to enter into force on the date of your note in reply.

Accept, Excellency, the renewed assurances of my distinguished consideration.

Note: Similar draft notes also exist which may be used to signify agreement to the institution of any one of the three types of investment guaranty separately; there is no requirement that a participant country must agree to all three types of coverage.

Source: International Cooperation Administration, Investment Guaranties Division.

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