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TO: Department of State

FROM: AmEmbassy, RIO DE JANEIRO February 5, 1964

SUBJ: ISSUANCE OF DECREE REGULATING THE PROFITS REMITTANCE LAW.

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There is transmitted herewith a translation of the decree signed by President Goulart on January 17, regulating the so-called Profits Remittance Law of September 3, 1962(Law No. 4,131). A detailed discussion of the provisions is presented below for internal U.S. government use only.

I - Summary

As reported earlier, the regulating decree contains few surprises. Most of the issues had been thoroughly aired publicly, and statements by the President and other Administration spokesman left little doubt that the regulations would tend toward a restrictive interpretation of the law. While expecting the worst, however, foreign business interests, at least, expected that doubts left by conflicting and ambiguous provisions of the law itself would be clarified in the regulatory decree. The decree did not entirely live up to expectations in this respect and there still remain several points which presumably will only be clarified as the regulations are carried out.

As to the substance of the implementing regulations, though not entirely clear most observors including the foreign investors themselves, interpret the decree as excluding all re-investments,from the base on which remittances of profits may be calculated. The limit on remittances of payments for royalties and technical assistance combined

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ECON/JKrizay:anc Robert B. Elwood

Ralph V. Korp

is set at 2% annually of receipts or cost of the product involved though the regulations do not indicate whether the remittance is to be calculated on the highest or lowest of these bases. Royalties may not be remitted to firms holding a "controlling" interest in the remitting firm. Interest rates on foreign loans are not to exceed interest rates prevailing in the capital market of origin for loans of similar types "in like conditions" The decree also prohibits government credit institutions from providing loans for initial investments of foreign companies and from guaranteeing foreign loans of firms owned or controlled from abroad. Exceptions may be made in these two cases by the Executive Power.

Of longer range interest, the decree provides that SUMOC shall classify all economic activities on the basis of regional priorities and that various operations with foreign countries covered by the decree will be incorporated into national or regional plans. In the same vein, it is provided that import duties may be reduced up to 30% on machinery or equipment imported depending upon the region where it is to be employed.

All of the provisions referred to above contain some ambiguities so that the exact meaning of them is not entirely clear. The main provisions are discussed more fully later in this airgram where an attempt at pointing out some of these ambiguities is made.

The effects of the regulations in an economic sense will, of course, depend to some extent on interpretations later to be applied. It is probably fair to say, however, that in the short run the restrictions are probably of secondary importance so far as remittances are concerned in that few are likely to be permitted anyway in light of the present exchange crisis. The decree does nothing, obviously, to improve the climate for new foreign investments but these have already dwindled to almost nothing. Moreover, one cannot say that the restrictions contained in the law and in the regulations are the only factors contributing to this atmosphere. Continuing political crises, rising inflation, labor strife, threat of expropriation in some sectors and the present unrealistic exchange rate all contribute to the poor investment climate.

It is likely that the restrictions on foreign investment will tend to discourage investment of large foreign firms to a greater extent than those of small investors. Small investors, particularly those not incorporated abroad, will be less inhibited in resorting to the parallel market for exchange which can easily be remitted abroad illegally. Such transactions on any large scale present problems for large firms, however, in that they encounter difficulty

illegally remitted
in showing ~~xxxxxxx~~ earnings on their home office accounts. Thus the law, as regulated by this decree, unfortunately will tend to discourage the kind of large scale investment involving the importation of the newest technology which ~~xxx~~ large firms are most likely to be able to provide. At the same time, the restrictions will be less effective in controlling activities of small foreign investors, particularly speculative types who care little about legal niceties in any case.

The transfer of technology to Brazil in some cases may also be discouraged in the future by the low limits placed on royalty and technical assistance remittances by the regulating decree. Pharmaceutical products and other products the cost of which is composed largely of research costs, would appear to be principally affected by this restriction.

II - The Reinvestment Issue.

While there is no statement in the decree devoted specifically to excluding reinvestments from the remittance base as had been the case in some of the earlier drafts, it is the interpretation of most observers that they are excluded. The decree states, in the sole paragraph of Article 31, that the 10% limit on profits which may be remitted abroad shall be calculated only on the "registered investment as defined in Article 3". Article 3, in turn, defines "investment" as Foreign Capital incorporated into the social (corporate) capital and participating directly in the risk of the undertaking. While the main purpose of Article 3 is probably to distinguish "investment" from "loans" (Article 4), the definition as therein stated does not specifically exclude re-investments. It does, however, limit the definition of "investment" to "foreign capital". Foreign capital is, in turn, defined in Article 2 as machinery and equipment which entered the country without exchange cover and financial or monetary resources brought in for application in economic activities. Furthermore, Article 15 of the decree states that for the purposes of registration of Foreign Capital, proof of its entry into the country shall be required. By inference, then, the decree seems to imply that only capital brought in from abroad can be included in the remittance base.

It is of interest that in the draft regulations presented earlier by then Finance Minister Carvalho Pinto, it was stated in Article 31 that the 10% remittance ceiling was to be calculated on registered investment as defined in Articles 2 and 3. In other words, there was a clear reference to foreign capital as the base. The fact that reference to Article 2 (definition of foreign capital) is eliminated from Article 31 of the decree, however, is not considered by most observors to be meaningful since registered investment is defined in Article 3 as foreign capital anyway and automatically leads to reference to Article 2.

The faint hope that the decree could be interpreted to include re-investments rests upon Articles 5 and 51♀ Article 5 defines re-investments as amounts which could have been legally remitted abroad but were not. Article 51, in turn, permits "symbolic" exchange transactions, subject to authorization of SUMOC, covering purchase and sale of exchange where "registrable operations" are involved. This article would permit symbolic "round-tripping" remittances where firms wished to re-invest in a way that the re-investment could be added to the remittance base. Most observors believe, however, that this provision applies only to future transactions and could not be applied retroactively.

It should be added that even if some re-investments (other than through symbolic "round-tripping") can be added to the remittance base, they may only be registered in Cruzeiro terms so that, owing to the rapid inflation, present values translated into dollar terms would, in most cases, amount to very little. There is permitted, under Brazilian law, periodic revaluations of assets and registration of such monetary corrections of capital are required by the Profits Remittance Regulations also in Cruzeiro terms (Articles 7 and 14). However, one would have to stretch the interpretation of Article 51 even more to include monetary corrections in the base. Even so, it should be added that coefficients used in making these monetary corrections of capital have historically lagged substantially behind price increases. Moreover, many firms have not revalued even to the extent permitted by the coefficients because such revaluations are subject to a 10% tax.

III - The Question of Royalties and Technical Assistance

The regulations provide that combined remittances for royalties and technical, scientific, administrative and similar assistance may be deducted on income tax returns up to a limit of 5% of gross receipts of the product involved. Remittances abroad for these activities, however, are limited to a combined total of 2% of the cost or of the gross receipts of the product.

These limitations have given rise to a number of questions, one being the very legality of these articles of the regulations. The law on which the regulations are based, speaks only in terms of a limitation of 5% of gross receipts of the product involved which may be deducted as royalty or technical assistance remittances for income tax purposes. A flat limitation of 5% on the level of such remittances is provided for in the law only in case of serious balance-of-payments difficulties and, in this case, only for temporary periods. Nowhere, is a limitation of 2% mentioned in the law.

Aside from the question of the legality of this provision in the regulations, another question comes to mind with respect to the base on which the 2% remittance ceiling may be calculated. The regu-

(♀) It will be recalled that the law itself did not clearly exclude reinvestments.

lations do not state clearly whether the 2% is to be based on either the cost of gross receipts at the remittor's option or whether on the highest or lowest of these bases.

The regulations also suggest that the 2% maximum ~~limitation~~, however it is to be calculated, may not be granted in all cases. The law itself provided that coefficients would be established for the purpose of calculating the tax deduction so that the 5% tax deduction ceiling was never intended to be a maximum for all categories. Indeed, the income tax law itself provides for varying levels of deductions for royalties and technical assistance payments depending upon the nature of the product. (Hence deductions for royalty payments for perfume are set at a lower ceiling than for machinery). The regulations, however, contemplate that the same coefficients will also be applied to the 2% remittance ceiling. According to SUMOC sources, the table of coefficients now applied for tax purposes will also be applied to the remittance ceilings pending revision of the present coefficients. There may also be some question as to the legality of this provision.

Further on the question of royalties, as indicated above, remittances of royalties are not permitted by firms when a majority or controlling interest of the remitting firm's capital belongs to the recipient. The pertinent article of the law itself was not clear on this point but previous drafts of the regulations limited the prohibition to cases where the recipient firms held majority interest in the remitting enterprise.

The definition of technical and other types of assistance contains a limiting clause to the effect that specialized technical knowledge must be involved which cannot be obtained in the country. This also goes beyond the provisions of the law which required only that the "essentiality" of such services had to be demonstrated. How the requirement stipulated in the decree is to be carried out is not spelled out.

A final point of interest in this regard has to do with the effectiveness of patents and trademarks. It will be recalled that the profits remittance law (Article 11) required that patents and trade marks had to be still in force in the country of origin in order to be eligible for remittance purposes. (Embassy s A-142 of June 7, 1963). The regulations retain this point (Article 10) and go a step further in requiring that the patent or trademark be in force in both countries. This question and its relation to the International Convention for the Protection of Industrial Property will be treated in a separate airgram.

IV - ~~Restrictions of Foreign Firms Borrowing~~
Restriction on government banks guaranteeing loans from abroad

on behalf of foreign firms are similar to those spelled out in the law itself (Article 37 and 38 of the law) except that the definition of "foreign firm" in this case was broadened in the regulations to include any enterprise whose relative or absolute majority of voting capital is owned abroad. (The law speaks only of majority of voting capital). In any case, such guarantees are only permitted by executive decree (Article 64 of regulations). Initial loans by government lending institutions may only be made to foreign firms (Majority on control of capital held abroad) where projects involved are considered of great interest to the national economy and upon special authorization of the executive power. Financing of new investments of existing foreign firms are treated in the same way. (Article 65 and 66 of the regulations). Also, as provided in the law, only voting shares of branches and subsidiaries may be marketed locally. (Article 67 of regulations).

V - Remittances of Interest on Lonas

The only restriction on remittance of interest payments, other than the rate of interest provided for in the loan contract, is that the interest rate charged may not exceed that prevailing in the financial market whence the loan originated for operations of the same type and under similar conditions. The addition of the words "similar conditions" would appear to provide some flexibility in interpreting this article (Article 38). If the article is interpreted in a strict manner, however, it is likely that few private loans will be made available to Brazil from advanced countries, since under the best of circumstance, loans made abroad usually involve a greater risk factor for the lender than do domestic loans.

VI - Accounting Regulations

Article 68 and 69 and their sub-paragraphs set forth certain accounting requirements with the second of these articles requiring the Ministry of Industry and Commerce to issue, within one year, a new plan of accounts which all companies will be obliged to follow. Some firms have expressed concern that such government-directed, uniform accounting requirements will perforce lead to a greater degree of government control and interference. The regulations give no hint as to the purpose of this requirement and there is no way of judging whether these expressed fears have any foundation. The law also contains a similar provision (Article 20).

VII- Foreign Investments and Economic Planning

Chapter V of Title II of the regulations is devoted to the question of incorporating foreign investments into the nation s economic plans. SUMOC is charged with the responsibility of classifying economic activities "on a priority basis, according to different levels of regional development." It is also provided that rules regarding the system of prior authorization of foreign investments and the registration of any foreign operations covered by the decree will be changed in this vein. Additionally, it is provided in this chapter that import tariff rates on machinery and equipment may be raised or lowered by 30% depending upon the classification of the region where the material is to be used.

The provision permitting tariff adjustments simply reproduces Article 49 of the law. The rest of this chapter evidently is based on Article 53 of the law which envisaged the possibility of applying different degrees of restrictions and/or incentives to foreign capital on a regionally oriented basis. This provision was inserted in the Senate version of the Profits Remittance Bill which did not provide for a flat limitation on profits remittances. It will be recalled that the 10% remittance limitation was re-inserted in the Chamber and was retained in the final version without altering the rest of the text. Once the bill became law with the 10% limitation included, Article 53 lost much of its meaning. The concept, nonetheless, is retained in the regulations in a somewhat altered form but with its implications in the circumstances not entirely clear.

VIII - Miscellaneous Provisions and Concluding Remarks

The regulations contain many other provisions not elaborated on above. Among these are: the requirement that foreign banks be treated on a reciprocal basis, requirements that Brazilians or residents in Brazil register any assets they hold abroad, the authority to enter into agreements with foreign countries for the exchange of information concerning remittances and related matters, exchange fraud penalties and authority to assess an exchange surcharge in times of balance of payments difficulties. These provisions are essentially the same as those contained in the law and, in many cases, do not augment already existing authority.

Missing from the regulations is the provision contained in Article 28 of the law permitting granting to the Bank of Brazil an exchange monopoly for limited periods in times of exchange difficulty. This omission should not be construed as meaning that an exchange monopoly may not at some point be established. Authority exists in the law and elsewhere for such action. Nonetheless, it is curious that the regulations do not take this provision into account.

While the regulations still leave many points to be clarified as suggested above, it must be admitted that a number of apparent conflicts in the law have been clarified, albeit to the detriment of foreign investment in most cases. Doubtful cases of issues which will undoubtedly arise out of the execution of the decree are to be resolved by the President on recommendation of SUMOC and the Finance Minister (Article 81). This, indidentally, is another interesting change from earlier drafts which gave this authority to SUMOC.

At all events, issuance of the long-awaited implementing regulations is likely to have no immediate practical effect. Completion of registrations continues to be slow although the staff at SUMOC has now been built up to around 50 and is expected to be further enlarged suggesting that the log jam may soon be broken. Even if there is some speed-up in the registration process, the foreign exchange situation is likely to continue to prevent any extensive remittances. On the inflow side, new foreign investments are already practically nil and this situation is not expected to change in the near future. In short, the signing of the regulatory decree, though widely publicized, does not in itself constitute any major turning point in the foreign investment climate in Brazil.

There is confidence among foreign investor here that in the long run, there will be modifications in the law as the realization grows that foreign investments are in Brazil's interest. This optimistic, long run view is probably well founded assuming no radical change in Brazil's basic political orientation, for there remains in Brazil a strong, development-oriented atmosphere which should in time militate toward a more pragmatic, less emotional treatment of this subject. It would probably not be reasonable to expect, however, that if such modifications in the present restrictions eventually come about they will go so far as to leave foreign investments completely unregulated as they have been in recent years.

For the Chargé d'Affaires a.i.

John Krizay
Second Secretary of Embassy

DECREE No. 53,451 January 17, 1964

REGULATION OF THE PROFITS REMITTANCE LAW

TITLE I

Registration with the Superintendency of Money and Credit

CHAPTER I

Preliminary Provisions

Article 1 - For the purposes of Law 4,131 of September 3, 1962, registration with the Superintendency of Money and Credit shall be obligatory under the special service established therein, regardless of any other prior registration made for any purpose, for all individuals and legal entities holding foreign capital and those who may desire to transfer abroad such earnings as are listed in Items "i" and "j" of this Article, as well as the following:

a) foreign capital investment;

b) foreign capital loans;

c) reinvestments;

d) supplementary capital;

e) monetary adjustment of capital;

f) contracts involving transfers in the form of royalties and payments for technical, scientific and administrative assistance and the like;

g) the amounts of investment returns and remittances of profits and dividends;

h) amortization of loans and interest remittances;

i) remittances for payment of technical, scientific, and administrative assistance and the like;

j) remittances for payment of royalties;

l) remittances for payment of other services, and other remittances under any title;

m) assets and holdings, including deposits abroad owned by those residing or domiciled in Brazil, except holdings owned by foreigners at the time of their entry into the country;

Sole Paragraph - Registration of the following shall also be compulsory.

a. domestic capital owned by those residing or established abroad;

b. Cruzeiro remittances made under any title through the banking system, through the Mail Service or by any other means.

c. Currency and valuables not intended to defray expenses or for personal use, taken abroad by travelers.

Article 2. Foreign capital is defined as such assets, machinery, and equipment having entered the country without a corresponding expenditure of foreign exchange, and intended for the production of goods or services, as well as financial and monetary resources brought into the country for investment in economic pursuits, when such holdings, in either case, are the property of individuals or legal entities domiciled abroad.

Sole Paragraph. - Foreign capital in the form of investments or loans shall be subject to the rules and regulations which govern the entry and application of the same, having in view the interests of the national economy.

Article 3. "Investment" shall be considered to be foreign capital which is integrated into the social capital and participates directly in the risk of the economic undertaking.

Article 4. "Loan" shall be considered to be foreign capital which is not integrated into the social capital of the economic undertaking, and does not participates directly in its risks.

Paragraph 1 - Loans will obligarobily have their application, amortization and remuneration properly regulated by a legal instrument.

Paragraph 2 - Loans obtained for the purchase of capital goods abroad, whether conceded by the manufacturer of the same or by a third party, shall be called "Financing".

Paragraph 3 - Loans obtained abroad and brought into the country in the form of monetary or financial resources, shall be called "Cash Loans".

Paragraph 4 - Credit concessions shall not be subject to registration as long as they are not considered loans or a financing.

Article 5 - "Reinvestment" shall be considered to be the amounts which would have been remitted abroad on the account of earnings and which were not, having been applied, according to the respective accounting entry, under the title "Passivo Não Exigível" (Liabilities not required), in the enterprises itself or in another sector of the national economy.

Article 6 - "Supplementary capital" shall be considered to be that portion of profits, whether reinvested or not, exceeding the limit of ten percent (10%), as calculated in accordance with Articles 31, 32 and 33 of the present Decree.

Article 7 - "Monetary Adjustment of Capital" shall be considered to be the changes carried out in the monetary value of the social capital of the enterprises in accordance with legislation in force.

Article 8.- "Interest" shall be considered to be all amounts, fixed or variable, that may be paid as charges on any loan, under any title and under any other name whatsoever.

Article 9 - "Domestic Capital" shall be considered to be that which, although belonging to individuals or legal entities residing or established abroad, does not correspond to goods or financial or monetary resources proven to have entered the country.

Article 10 - "Royalty" shall be considered to be any fixed or percentual remuneration payed periodically to individuals or legal entities residing or established abroad, for permission to utilize industrial property covered by patents and trade marks, registered in Brazil and in the country of origin provided that legal protection is still in force in both countries.

Article 11 - "Technical, administrative, scientific, and similar assistance" to be service within each specification which requires from its executors, individuals or legal entities residing or established abroad, specialized expert knowledge which cannot be obtained in the country.

Article 12 - "Subsidiary" of a foreign enterprise shall be considered to be any firm established in Brazil whose capital shares with voting rights are controlled wither directly or indirectly by an enterprise established abroad, even whether or not it holds the majority of its social capital.

Article 13 - The currency in which the operations mentioned in Items a and b of Article 1 of this Decree are to be registered shall be, always, that of the country of origin of the foreign capital. The currency for registration of the operations provided for in

Item f of the above-mentioned Article shall be always that of the country of residence or headquarters of the recepients of the remittances covering royalties, and payments for technical, scientific, administrative, and similar assistance.

Article 14 - Registration of reinvestments, supplementary capital, monetary adjustments of capital, and domestic capital belonging to those residing or established abroad shall be made in terms of national currency.

Article 15 - For the purpose of registering foreign capital, proof must be given of its having entered the accounting books, of its entry into the country, of its ownership, and residence or headquarters of its owner, in accordance with the criteria established by the Superintendency of Money and Credit.

Article 16 - In the case of foreign capital for investment, or financing, entering the country in the form of capital goods, there shall be required presentation as proof of the value of such goods, the price in effect in the country in which the goods were purchased, regardless of the terms agreed upon, taking into account other provisions pertinent to the authorization policy previously in force.

Sole Paragraph - Should adequate proof of the price in the country of origin not be available, registration shall be made in accordance with the value as shown in the accounting books of the firm receiving the capital goods, or on the basis of an appraisal which will be duly regulated by the Superintendency of Money and Credit.

Article 17 - Upon registration of the operations mentioned in Items a, b, and f of Article 1 of this Decree, the Superintendency of Money and Credit shall furnish the Exchange Department of the Banco do Brasil S/A, and the interested party with a certificate in which shall be specified the maximum limit for profit remittance purposes, taking into account regulations of the Income Tax legislation.

Article 18 - The Superintendency of Money and Credit shall publish in its Bulletin and in the Official Gazette a list of the registrations made during the preceding semester.

Article 19 - Profit Remittances abroad shall require proof-of-payment of income tax and, with the exception of those operations mentioned in Item 1 of Article 1 of this Decree and Items b and c of the Sole Paragraph of the same Article, shall also depend upon registration of the firm and the operation with the Superintendency of Money and Credit.

Article 20 - Registration of firms holding foreign capital and those wishing to make the transfers referred to in Item g, h, i, and j of Article 1 of this Decree shall be applied for on appropriate forms provided by the Superintendency of Money and Credit.

Article 21 - Upon proof of payment of income tax, the Exchange Department of the Banco do Brasil S/A shall authorize the remittances provided for in Items g, h, i, and j of Article 1 of this Decree, taking due notice, in each case, of the maximum limit declared on the Registration Certificate, and informing the Superintendency of Money and Credit of this action.

Article 22 - The remittances and registrations provided for in Items l of Article 1 and b and c of its Sole Paragraph herein shall be made in accordance with regulations to be established, within thirty (30) days from the date of publication of this Decree, by the Council of the Superintendency of Money and Credit.

Article 23 - Within thirty (30) days of making any of the remittances provided for in Items g, h, i, j, and l of Article 1 of this Decree, the remittor must request registration of the remittance, on the appropriate form provided by the Superintendency of Money and Credit, duly accompanied by the corresponding corroborating documents, under the penalties of the law.

Sole Paragraph - Registration of the amounts and valuables mentioned in Item c of the Sole Paragraph of Article 1 of this Decree must be requested on the form mentioned in this Article and at the time established by SUMOC (Article 22).

Article 24 - In order to maintain its registries up-to-date, the Superintendency of Money and Credit may solicit and require, whatever information it may deem necessary from firms.

Article 25 - Individual and legal entities who do not apply for the registration within the time periods established by the Council of the Superintendency of Money and Credit, will be subject to the penalties prescribed in Article 80 of this Decree regardless of other penalties deriving from legislation in force.

Solo Paragraph. Individuals or legal entities who fail to answer request of statistical data and other information made by the Superintendency of Money and Credit will be subject to the same penalties.

Article 26 - Whenever it may deem it necessary, the Superintendency of Money and Credit may act to verify information received as to its veracity through inspection and investigation of the party in question.

Sole Paragraph - Individuals and legal entities held responsible for irregularities shall be subject to the penalties set forth in this Decree and to those to be established by the Council of the Superintendency of Money and Credit, in accordance with legislation in force.

CHAPTER II

Capital Owned by Those Domiciled or Established Abroad

Article 27 - The registration of investments made after September 27, 1962 must be filed within thirty (30) days after the goods have been freed by customs and the exchange operation has been liquidated, both in the case of investments in capital goods and financial resources respectively.

Article 28 - The registration of reinvestments, supplementary capital, and monetary adjustments of capital made subsequent to September 27, 1962 must applied for within thirty (30) days from the date of the respective entry in the accounting books.

Article 29 - The registration of investments in the form of capital goods may be granted only to those operations which previously have been submitted for examination by the monetary authorities, in accordance with the regulations governing the authorization system previously in force and has received their approval, as evidenced by a Certificate of Authorization.

Article 30 - The registration of domestic capital referred to in Item a of the Sole Paragraph of Article 1 of this Decree, must be requested on the form established by the Superintendency of Money and Credit.

Paragraph 1.0 - Investments made up to December 31, 1963, must have their registration applied for by May 30, 1964.

Paragraph 2.0 - Applications for capital invested on or before December 31, 1963 must be within thirty (30) days from the date of their respective entry in the books of account.

Paragraph 3.0 - Changes in the amounts of those investments should be submitted withing a period of thirty (30) days from the date of their respective entry in the books of accounts.

Article 31 - Annual profit remittances abroad shall not exceed ten percent (10%) of the investments registered in accordance with Article 13 of the present Decree.

Sole Paragraph - The percentage set forth above will be calculated only on the registered investment, as defined in Article 3 of this Decree.

Article 32 - It shall be the responsibility of the Superintendency of Money and Credit, on registering a remittance, to verify whether the investment has continued to form a part of the social capital of the enterprise during the entire fiscal year.

Paragraph 1 - Should the investment not have formed part of the social capital for the entire period to which the remittance refers, the limit established in Article 31 shall be proportionately reduced.

Paragraph 2 - The relative limit mentioned in Article 31 may be reduced in absolute terms, in case the enterprise reduces the level of investment.

Article 33 - Remittances of profit in excess of the limit of ten percent (10%) calculated in accordance with Article 31 and 32 of this Decree shall be considered repatriated capital and deducted from the corresponding registration, for the purposes of reducing the value, in absolute terms, of future remittances.

Article 34 - Only registered investments, as defined in Article 3 of this Decree may be repatriated, and the annual portion eligible for repatriotion can not exceed twenty percent (20%) of the value of the registered investment.

Article 35 - The registration of financing investments made after September 27, 1962 must be applied for within thirty (30) days from the date on which the goods have been freed by Customs.

Article 36 - The registration of financing investments can only be granted to those operations which, having been previously submitted for examination by the monetary authorities, in accordance with the regulations governing the authorization system previously in force, been approved, as evidenced by a Certificate of Authorization.

Article 37 - The registration of cash loans made after September 27, 1962 must be applied for within thirty (30) days from the date of the liquidation of the exchange operation.

Article 38 - The amount of interests to be remitted cannot exceed the "quantum" calculated at the rate stipulated in the respective loan agreement and at the rate in effect in the capital market whence loan originates on the date of its fulfillment, for operations of the same type and in like conditions.

Paragraph 1 - It shall be the responsibility of the Superintendency of Money and Credit, on and after the date of registration, to suspend and refuse remittance of the amount in excess.

Paragraph 2 - Upon registration of remittances the amount of interest in excess of the limit set forth in this Article shall be considered as amortization of the loan.

CHAPTER III

Technical, Administrative and Scientific Assistance

and the like

Article 39 - The registration of contracts covering technical, administrative, scientific, and similar assistance signed up to December 31, 1962 and still in force, must be applied for by May 31, 1964.

Article 40 - The registration of contracts covering technical, administrative, scientific, and similar assistance signed after December 31, 1963 must be applied for within thirty (30) days from the date of its signature.

Article 41 - Remittances resulting from the execution of contracts covering technical, administrative, scientific and similar assistance may be made only during the first five years of the firm's operation or during the first five years subsequent to the introduction of the special industrial process; this period may, however, be extended for five additional years by the Council of the Superintedency of Money and Credit.

Sole Paragraph. - The Superintendency of Money and Credit shall establish, within the maximum period of sixty (60) days from the date of the publication of these regulations, rules for the execution of this Article.

Article 42 - The Superintendency of Money and Credit may, whenever it deems necessary, ascertain the effectiveness, the necessity for and the quality of the technical, administrative, scientific, or similar assistance rendered to firms established in Brazil, which involve remittance of earnings abroad.

Article 43 - The sum total of the amounts due as royalties for the exploitation of patents of invention or use of industrial or commercial trade marks and for technical, scientific, administrative or similar assistance, may be deducted on income tax declarations, for purposes of Article 37 of Decree No. 47,373 of December 7, 1959, up to the maximum cumulative limit of five percent (5%) of the gross income originating from manufacturing or sale of the product.

Paragraph 1.0 - Within the percentage limit established in this Article, the amount to be remitted or transferred abroad as payment for technical, administrative, scientific or similar assistance, added to the amount to be remitted or transferred abroad as royalties, may not exceed the maximum cumulative limit of two percent (2%) of the cost of the manufactured product, or of the gross revenue originating from the manufacturing or sale of the product.

Paragraph 2.0 - Coefficients for types and classes of production or groups of activities will be established and periodically revised, by act of the Minister of Finance, according to the degree of importance, within the percentage limits respectively established in this Article and in its first paragraph, both for income tax declaration purposes as well as for purposes of remittances of transfers abroad.

CHAPTER IV

Patent and Trade-Mark Licenses

Article 44 - Registration of contracts involving payments of royalties, signed up to December 31, 1963, and still in force must be applied for up to May 31, 1964.

Article 45 - Registration of contracts involving payment of royalties signed after December 31, 1963 must be applied for within thirty (30) days from the date of its signature.

Article 46 - The Superintendency of Money and Credit may, whenever it deems necessary, may investigate the effectiveness and utility of the patented or trade-marked objects that involve remittance of royalty payments abroad.

Article 47 - Branch or subsidiary enterprides established in the country will not be permitted to remit royalties to their headquarters located abroad.

Sole Paragraph - When the majority of the social capital or the control of the capital of the firm belong to recepients of royalties residing abroad, royalty remittances shall not be permitted.

CHAPTER V

Holdings and Deposits Abroad

Article 48 - Individuals and legal entities residing or established in Brazil are hereby obliged to declare to the Superintendency of Money and Credit, holdings and valuables they may possess abroad, including bank deposits, exclduing, however, in the case of foreigners, whatever they owned at the time of their entry in Brazil.

Article 49 - Failure to comply with the stipulations of the foregoing Article shall result in considering the valuables and bank deposits abroad as illicitly earned and, as such, subject to legal action for the purpose of recovering or compensated for such amounts by applying holdings or valuables exksting in Brazil, which may be seized by the Treasury.

Article 50 - Individuals and legal entities residing or established in Brazil shall notify the Superintendency of Money and Credit, on the proper application form and at the end of each quarter, of the acquisition od new goods and valuables abroad, indicating the resources used for such acquisitions.

Sole Paragraph - The same form referred to in this Article must be used for making an annual declaration up to January 31 of each year, which shall include the amount of goods, valuables and bank deposits abroad belonging to the persons mentioned herein as of December 31 of the preceding year, with an explanation of the variations indicated therein.

TITLE II

MISCELLANEOUS PROVISIONS

CHAPTER I

Exchange Provisions

Article 51 - Entries in the books of account corresponding to concessions of credit and involving operations that must be registered with the Superintendency of Money and Credit may be accomplished through a "symbolic" purchase and sale of exchange, duly authorized by the Superintendency of Money and Credit, for the purpose of regularization.

Article 52.- Whenever it may be necessary to bring exchange availabilities in line with actual needs, the Council of the Superintendency of Money and Credit is hereby authorized to hand down Instructions requiring a strictly cash financial charge upon the value of imported goods and financial transfers, to a maximum of ten percent (10%) of the value of the imported goods and fifty percent (50%), of the value of any financial transfer whatsoever, including expenditures in connection with international travelling.

Sole Paragraph - The maximum period during which the right mentioned in this Article may be exercised shall be one-hundred-fifty (150) days of each year, consecutive or not.

Article 53 - The receipts accruing from the financial charge provided for in the foregoing Article shall constitute a cash reserve in cruzeiros to be kept in a separate account for that purpose in the Superintendency of Money and Credit and utilized whenever it may be considered opportune solely for the purchase of foreign exchange and gold bullion, to strengthen exchange reserves and availabilities.

Article 54 - The Ministry of Foreign Affairs, in conjuntion with the Superintendency of Money and Credit, shall carry out studies and understandings that will permit the Federal Government to enter into agreements with other nations for administrative cooperation having in view the exchange of information, on exchange policy, remittance of earnings, value of imported capital assets, motion-picture-film and machine rentals and of any other nature.

Article 55 - If verified during the course of an administrative investigation, in which the suspect is guaranteed the right to defend himself fully, any fraudulent act in connection with Customs duty or exchange operations resulting from under- or over-invoicing on importing or exporting goods or merchandise, the Council of the Superintendency of Money and Credit shall penalize through fining the responsible parties in an amount up to ten (10) times the value of the amount under- or over-invoiced, or by suspension of the right to import and export for a period of one (1) to five (5) years.

Sole Paragraph - The Foreign Trade Department of the Banco do Brasil S/A shall submit to the Council of the Superintendency of Money and Credit within a period of ninety (90) days, from the date of publication of this Decree, a plan presenting measures to be enforced with a view to preventing to the maximum extent, the occurrence of fraud in import or export transactions.

Article 56 - Exchange operations in the free-rate market shall be negotiated through establishments authorized to deal in exchange with the assistance of an official exchange broker, whenever required by law or regulation, and both shall be held responsible for proper identification of the client as well as the correct classification of information given by the same, in accordance with the rules established by the Superintendency of Money and Credit.

Paragraph 1 - Operations that are not clearly among those itemized in the Classification Code adopted by the Superintendency of Money and Credit or that come under the headings "Miscellaneous" or "Others" may be handled only through the Banco do Brasil S/A.

Paragraph 2 - Any false declaration of identity on the application form, (whose format and number of copies shall be determined by the Superintendency of Money and Credit), required for each operation and signed by the client and having the visé of the bank and by the broker, shall be considered a violation for which the bank, the broker, and the transactor shall be held responsible and fined, each and every one, in an amount equal to thrice (3) the value of the operation.

Paragraph 3 - Any false declaration of information on the application form referred to in Paragraph 2, shall be considered a violation for which the client will be held solely responsible and punishable with a fine equivalent to one-hundred-percent (100%) of the value of the operation.

Paragraph 4 - For any improper classification, in accordance with rules established by the Council of the Superintendency of Money and Credit, of the information given by the client on the application form referred to in Section 2 of this Article, the bank and the broker who participated in the operation shall be held responsible and each shall be punishable with a fine equivalent from

5 to one-hundred percent (100%) of the respective value of the operation.

Paragraph 5 - In theevent of repetition of the violation, the Council of the Superintendency of Money and Credit may cancel the authorization given to banking establishments that fail to comply with the stipulations of this Aøticle to operate in exchange and propose to the respective authorities equal sanctions in relation to the brokers.

Paragraph 6 - The text of this Article shall be, obligatorily, written on the application form referred to in Paragraph 2.

Article 57 - Banking establishments authorized to operate in exchange shall be obliged to submit a daily report to the Superintendency of Money and Credit on the sum total of exchange purchases and sales, together with an indication of the purposes of such operations, in accordance with the established classification.

Sole Paragraph - When buyers or sellers of exchange are legal entities, the statistical information should correspond exactly to the entries made by these firms in their books of account.

Article 58 - Banking establishments failing to report the exact value of their operations shall be subject to a fine equivalent to a maximum of thirty (30) times the highest minimum-wage in the country, and this amount shall be tripled in the event of a repeated violation.

Sole Paragraph - The fine shall be imposed by the Inspector-General for Banks and any appeal against his action, which shall not have suspensory effect, may be made to the Council of the Superintendency of Money and Credit within a period of fifteen (15) days from the date of notice of the infringement.

Article 59 - In the event of repeated violations, the Inspector-General for Banks shall request the Executive Director of the Superintendency of Money and Credit to cancel the authorization to deal in exchange given to the banking establishments responsible for such violation. Final decision on this matter shall be taken by the Council of the Superintendency of Money and Credit.

Article 60 - The Council of the Superintendency of Money and Credit may determine that exchange operations relative to movements of capital be transacted, in whole or in part, in the exchange market, apart from the import-and-export exchange market, whenever the exchange situation makes such action advisable.

Article 61 - In any case and whatever the exchange system may be, the purchases of exchange for financial remittances registered with the Superintendency of Money and Credit in accordance with this Decree, may not be granted more favorable terms than those applicable to remittances in payment of imports in the general category, as provided for in Law 3,244 of August 14, 1957.

CHAPTER II

Provisions Regarding Foreign Banks

Article 62 - Fordgn banks authorized to operate in Brazil shall be subject to the same legal prohibitions or restrictions applicable to Brazilian banks which may wish to establish branch offices in the places where their main offices are located, in accordance with legislation there in force.

Sole Paragraph - The Council of the Superintendency of Money and Credit shall issue the Instructions necessary in order that the provisions of this Article shall be complied with within a period of two years, dating from September 3, 1962, as regards the foreign banks already in operation in the country.

Article 63 - Foreign banks whose main offices are located in places where legislation imposes restrictions on operations of Brazilian banks, are forbidden from acquiring more than thirty percent (30%) of the voting stock of Brazilian Banks.

CHAPTER III

Credit Provisions

Article 64 - The Treasury and official public credit institutions, both Federal and State, including mixed-capital enterprises controlled by the same, may only through a Presidential Decree guarantee foreign loans obtained by enterprises whose absolute or relative majority of voting stock is held by individuals or legal entities who do not reside or are not established in Brazil.

Article 65b- Enterprises whose majority of voting stock is held ıls or legal entities domiciled or established abroad and foreign enterprises shall have no access to credit from establishments mentioned in the foregoing Article pending ...rated commencement of their operation or activity.

Sole Paragraph - Projects considered of high interest to the national economy shall be excluded from the considerations of this Article upon special authorization of the Executive Power.

Article 66 - The agencies and establishments mentioned in Article 64 may concede loans, credits, or financing only for new investments in fixed assets of enterprises whose absolute or relative majority of voting stock is held by individuals or legal entities residing or established abroad when such firms are engaged in essential economic activities and their undertakings are located in economic regions of interest to the national economy, as defined and enumerated in a Presidential Decree and on advice of the National Economic Council.

Sole Paragraph - Investment of resources deriving from public investment funds established by law are also subject to the provisions of this Article.

Article 67 - Financing and investment organizations may offer in the Brazilian stock market only capital shares and stock issued by branches and subsidiaries of foreign capital enterprises, which are assured voting rights.

CHAPTER IV

Accounting Provisions

Article 68 - It is obligatory for enterprises, including corporations, to indicate in their balance sheets the specified portion of capital and credits belongingto individuals and legal entities residing or established abroad, in accordance with registrations filed with the Superintendency of Money and Credit.

Sole Paragraph - The same specification shall be made in the Profit-and-Loss statement setting forth that portion of profits, dividends, interest, and other amounts credited to individuals or legal entities residing or established abroad.

Article 69 - The Ministry of Industry and Trade, with the participation of the General Directorate of the Treasury and of the Superintendency of Money and Credit, shall present, within a period of one (1) year from the date of publication of this Decree, a plan of accounts and general accounting rules and regulations establishing time limits for the orderly adaptation of present accounting system which will be standardized for similar groups of activities and adapted to the needs and possibilities of enterprises of different sizes.

Sole Paragraph - Once the said plan of accounts and general accounting rules has received administrative approval, it shall, compulsorily, be adopted by all legal entities belonging to the different groups of activities.

CHAPTER V

Foreign Capital in Economic Planning

Article 70 - Foreign operations requiring registration with the Superintendency of Money and Credit, as provided for herein, shall be in accordance with the National or Regional Social and Economic Development Plans in order to obtain, among other results, the maximum utilization of foreign resources available.

Article 71 - In order to comply with the provisions of the foregoing Article, the Superintendency of Money and Credit shall submit to its Council the following:

I. A classified list of priority economic activities, in accordance with the varying degrees of regional development, prepared in cooperation with the National Economic Council;

II. Regulations amending present provisions concerning the system of prior authorization and present provisions concerning registration of operations with foreign countries, designed to subject the same to a prior examination as reformulated by the monetary authorities.

Article 72 - The processing of registrations mentioned in Items a, b, and c of Article 1 of this Decree shall continue to be followed until such time as the new regulations, referred to in Item II of the preceding Article, shall go into effect after being approved by the Council of the Superintendency of Money and Credit.

Article 73 - The Customs Policy Council shall have the right to reduce or increase by as much as thirty (30) percent the tariff rates imposed on machinery and equipment imported, according to peculiarities of the region to which they are destined, to the industrial concentration in which the machinery and equipment will be used and to the degree the existing machinery and equipment are being utilized.

Sole Paragraph - In the event that machinery and equipment are transferred from the region to which they were originally destined, the interested parties will pay to Customs, the corresponding amount of the tariff discount granted them at the time of import, whenever such equipment is moved to areas where the tariff discount has not been granted.

Article 74 - Registrations made by the Superintendency of Money and Credit, according to this Decree, will be organized as to facilitate a thorough analysis of the situation, movements and results of foreign capital.

Sole Paragraph - Based on registries referred to in this Decree, the Superintendency of Money and Credit, shall prepare a complete and detailed annual report to the President of the Republic and to National Congress.

CHAPTER VI

Miscellaneous Provisions

Article 75 - Foreign capital invested in Brazil shall receive identical treatment in law and under the same conditions as that granted domestic capital and any discriminatory practice whatsoever not provided for herein is hereby prohibited.

Article 76 - Criteria established for the import of used machinery and equipment shall be the same for foreign investors and enterprises as for domestic concerns.

Article 77 - An authorized import of used machinery and equipment shall be made under the same system used for imports of new machines and equipment.

Article 78 - Members of the Council of the Superintendency of Money and Credit shall be obliged to declare their personal wealth and earnings, as well as that of their spouses and dependents, on or before April 30 of every year, and the said declarations shall be examined and filed by the Federal Accounts Tribunal, which shall notify the Senate of its action.

Sole Paragraph - Members of the staff of the Superintendency of Money and Credit in positions of responsibility and holding regular jobs related to the registration of foreign capital or its control shall also be obliged to file the declarations mentioned in this Article.

Article 79 - The Superintendency of Money and Credit shall establish adequate rules and regulations for the processing of applications for registration and, wherever necessary, for control of exchange remittances.

Article 80 - Violations of any of the provisions of this Decree, save those for which specific penalties are mentioned herein, shall be punished by fines varying from twenty (20) to fifty (50) times the amount of the highest minimum-wage in the country, to be imposed by the Council of the Superintendency of Money and Credit in the manner established in Instructions to be issued for that purpose.

Article 81 - Cases not covered by this Decree and doubts arising in the course of its execution shall be resolved by the President of the Republic upon recommendation of the Council of the Superintendency of Money and Credit the Finance Minister having been heard.

Article 82 - Registrations referred to in Articles 27, 28, 35 and 37 of this Decree must be applied for within thirty (30) days from the date of its publication, if the following steps have been completed prior to the entry into force of the decree;

a) Customs clearance of the goods and liquidation of the exchange operation, as established in Article 27;

b) Completion of entries in the accounting books as established in Article 28;

c) Customs clearance of goods, as established in Article 35;

d) Liquidation of the exchange operation, as established in Article 37.

Article 83 - This Decree shall go into force on the date of its publication, and all other provisions to the contrary are hereby revoked.

Source: Translated from "O Estado de São Paulo", January 18,1964.