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STATEMENT OF DAVID H. BROCKWAY, DEPUTY CHIEF OF STAFF, RICHARD A. GORDON, INTERNATIONAL TAX COUNSEL, AND THOMAS B. JOYCE, ACCOUNTANT, STAFF OF THE JOINT COMMITTEE ON TAXATION

Hearings before the Committee on Foreign Relations, United States Senate on the proposed Income Tax Treaty With Canada, September 24, 1981.

Introduction

It is our pleasure to appear before you to provide staff assistance on the Canadian tax treaty currently under consideration by your Committee. As in the past, our staff has prepared a pamphlet on the treaty before you. This pamphlet gives an article-by-article description of the treaty and generally indicates those provisions which differ significantly from those normally found in United States tax treaties. The introduction to the pamphlet highlights the provisions of the proposed treaty which present significant policy issues. In addition, we have prepared a brief memorandum summarizing some of the issues raised by the various tax treaties before the Committee, including this one.

In preparing for this hearing, staff discussed the treaty with a number of affected taxpayers' tax lawyers, accountants, and academics with expertise in the area. We spoke with former government officals who participated in the negotiations. We worked closely with the Treasury and with the staff of the Foreign Relations Committee in those efforts.

Our remarks this morning are directed solely to the proposed treaty with Canada. In the hearings to be held this afternoon we will address some more general issues.

Importance of Ratification

The proposed treaty with Canada deals with many issues that have arisen over a number of years. The present treaty, as amended, is almost 40 years old and does not adequately address the current economic relationships between Canada and the United States. Canada is our most important trading and investment partner. Also, its physical proximity and the general language and background similarity between the two countries make the personal relationships between the two countries are among our closest. The proposed treaty contains a number of provisions that reflect these close personal and economic contacts. For example, it solves some problems of concern to persons who move between the two countries, and permits a deduction to residents of the one country for charitable contributions to universities in the other country which they or their family attended. It contains rules that may help to settle disputes as to the residence of persons who move from one country to the other for short periods of time. It provides and coordinates rules relating to taxation of capital gains. It solves some problems involving corporate reorganizations, and it improves the administrative provisions in the present treaty.

Also, among the very significant benefits provided to United States taxpayers under the pending treaty is a reduction in dividend withholding rates from the present 15 percent to 10 percent if the recipient owns 10 percent of the voting stock of the paying corporation. Furthermore, when compared to the existing treaty, the proposed treaty contains significantly expanded protection for United States taxpayers against discrimination by Canada.

In some cases, a particular taxpayer or industry receives better treatment under the present treaty than under the proposed treaty. Since the treaty is essentially a compromise between the conflicting interests of the two countries which have changed in a variety of respects since the present treaty was entered into, that result is not unexpected. The central issue is whether the final agreement represents a bargain which is sufficiently favorable overall to the United States that it should be ratified.

The proposed treaty was under negotiation for approximately six years. We have talked with a number of former Treasury officials involved in the negotiation process. They generally believe that the treaty is the most favorable result they could expect on a number of the important points such as nondiscrimination and the withholding rate on dividends. In general, they believe the treaty to be a good one and a vast improvement over the present treaty.

For a number of reasons, the pressure from Canadian business groups to agree to a new treaty may be less substantial than for the United States. One is that there is more United States investment in Canada than Canadian investment in the United States. Accordingly, the larger share of the benefits of the reduction in source taxation of direct investment dividends accrues to the United States taxpayers. Thus the reduction in the withholding tax on direct investment dividends from the present 15 percent to 10 percent in the proposed treaty is a significant concession by Canada.

Even for those Canadian businesses investing in the United States, the proposed reduction in the United States tax on dividends paid by United States subsidiaries to Canadian parent companies apparently is not that significant because much of that investment is routed through the Netherlands. This is due to a form of treaty shopping by which many Canadian direct investors may be able to receive dividends from the United States at the 5-percent tax rate provided for in the treaty between the United States and the Netherlands. [See, for example, the amended offer to purchase common stock of Hobart Corporation by CPE Acquisition Co., a wholly owned subsidiary of Canadian Pacific Enterprises (U.S.) Inc., February 6, 1981; pages 7 and 8 attached as exhibit.]

Discussed below are the significant issues that were brought to our attention in the course of our analysis of the treaty and discussions with outside persons, other staff and staff from the Treasury.

Issues

Nondiscrimination.--The United States generally insists that its tax treaties contain a broad nondiscrimination provision that would prohibit the treaty partner from discriminating against United States investors. At the insistence of Canada, the nondiscrimination provision in the proposed treaty is not as comprehensive as that sought by the United States or as that contained in the United States or the OECD Model treaties or the United Nations Model. On the other hand, the nondiscrimination provision in the proposed treaty is much broader than that contained in the present Canadian treaty which only applies to individual United States citizens resident in Canada. We understand that the provision is the broadest agreed to by Canada in any of its treaties. We also understand that a number of United States negotiators generally believe that Canada simply would not agree to a broader provision.

The area of concern is the treatment of Canadian corporations owned by U.S. shareholders. The U.S. model would prohibit Canada from taxing that Canadian corporation any less favorably than a similarly situated Canadian corporation owned by Canadian shareholders. In contrast, the proposed treaty only prohibits Canada from taxing a Canadian corporation owned by United States interests less avorably than a Canadian company owned by residents of any third country. For example, a Canadian company owned by United States residents cannot be taxed in a more burdensome manner than a Canadian company owned, for example, by a Swiss resident is required to be treated under the Swiss-Canadian income tax treaty. However, a Canadian subsidiary of a United States company can be taxed in a more burdensome manner than a Canadian company owned by Canadians. In effect, the United States is given most favored nation status. The present treaty does not provide for such most favored nation treatment.

Staff understands that the Canadian tax system contains several features that discriminate against foreign owned Canadian companies. A number of these involve Canadian taxation of natural resources. However, the situation is in a state of flux and is thus difficult to analyze. One particular area of concern is Canada's rules that provide incentives to natural resources exploration that are available only to Canadian controlled companies.

Some might question the wisdom of entering into a treaty with a developed country that permits a broad form of discrimination. Such a provision might be viewed as precedent for future negotiations particularly with developing countries that tend to want to discriminate to encourage local ownership of resources. Furthermore, it has been the long-standing policy of the United States not to agree to discriminatory treatment. The discriminatory treatment permitted here is prohibited by the OECD model convention. See Article 24(b). Canada reserved its position on the entire article. Commentory on the Articles of the OECD model Convention, Article 24, paragraph 61, pg. 174.

On the other hand, our discussions have given us little reason to doubt that Canada is unlikely to grant nondiscrimination protection to United States controlled Canadian companies. For example, it is stated Canadian policy to encourage Canadian ownership through its Petroleum Incentives Program.

It should be noted that the treaty leaves open the option for the United States Government to retaliate against this discrimination by increasing the United States income tax on United States corporations owned by Canadians under the anti-discrimination provisions of the Internal Revenue Code (sec. 896). However, there is more United States investment in Canada than Canadian investment in the United States which would limit the impact of retaliation. Moreover, it is not clear that the anti-discrimination provision gives the President the authority to increase taxes of United States companies even if they are owned by residents of a country which discriminates against U.S. investors.

If the Committee decides that discrimination presents sufficiently troublesome problems, it could, of course, recommend that the treaty be rejected. However, rejection of the treaty will not by itself end the discrimination by Canadians against United States owned Canadian companies.

If the Committee decides that the potential for discrimination by the Canadians is sufficiently troublesome, it could recommend the adoption of the treaty subject to a reservation on the Nondiscrimination Article (Article XXV) to the extent that it permits this discrimination. It must be emphasized, however, that Canada most likely would refuse to ratify the treaty subject to such a reservation.

Alternatively, if the Committee does not want to take either of the above actions because it feels that the treaty is sufficiently important that it should be ratified notwithstanding any problems presented by the nondiscrimination provisions, the Committee may wish to include a statement in its recommendations emphasizing its concern and urging the Treasury to resist strenuously similar provisions in future treaties. It may, however, wish to distinguish between developed and developing countries for this purpose.

Natural resource income.--The present treaty contains an overall 15-percent limit on the rate of tax that either country can impose on investment income paid to residents of the other country. The proposed treaty removes this overall limitation but replaces it with limitations on the level of source basis taxation of various types of investment income. However, mineral rents and royalties are income from real property which under the real property article (Article VI) may be taxed without limit by the country of source. Accordingly, the Canadian tax on mineral royalties will be increased to the 25 percent of gross Canadian statutory rate. The United States rate will increase to the statutory 30-percent rate. The proposed treaty contains a transition rule that will keep the lower 15 percent rate for one additional year only.

The provision will primarily affect United States persons who receive royalty income from natural resource operations in Canada. There are, however, Canadian royalty interests in United States resources and the United States Treasury will increase its revenues in those cases.

The exclusion of mineral royalties from any treaty limitation on the level of withholding taxes is consistent with present United States treaty policy and the OECD model convention. It is consistent with most current United States tax treaties and all of those currently before this Committee.

Affected United States taxpayers have argued that investments were made taking into account the 15-percent limit in the current treaty, and raising the tax on the royalties from that investment could make them noneconomic. Also, some have expressed concern that once the present treaty is approved Canada will issue its tax on increased rents and royalties, perhaps significantly.

It would be difficult to recommend a reservation, or rejection of the treaty, because of a provision that reflects current United States and international standards. However, we are not starting from scratch, and thus certain alternatives could be considered. One would be to grandfather existing mineral interests by giving them the current 15-percent rate. Another would be to have a longer transitional period followed by a phase out of the limitation. This would give investors time to adjust. An alternative would be to provide a much higher limit, for example 25 or 30 percent, which would permit Canada to increase the tax burden on United States mineral resource investors, but would give some comfort to United States investors against greatly increased Canadian taxation.

If the Committee decides that this issue is serious enough to warrant action it could, of course, recommend a reservation along the lines of one of the above alternatives. Alternatively, it could recommend ratification without reservation on this point but include a statement in its report instructing the Treasury to attempt to negotiate relief for United States mineral investors.

Benefits under Canadian integrated tax system.--In 1972, Canada introduced a new system of taxing income from corporations which partially combines or integrates the tax paid by the corporation on its earnings with any tax paid by the shareholder with respect to distributions from the corporation.

Under the Canadian system, a Canadian corporation pays tax at the normal rates whether or not the earnings are distributed.

At the shareholder level, shareholders who are Canadian residents include the dividend in their income and also "gross-up" the dividend by an amount equal to 50 percent of the dividend. That is, the shareholder reports as income the dividend plus an amount equal to 50 percent of the dividend. The shareholder may then credit an amount approximately equal to the gross-up against his tax otherwise due. The credit offsets both Canadian and provincial tax to reach this result. Unlike some other systems, no cash refund is made if the credit exceeds the taxpayer's total Canadian tax liability.

The intent of this system is to partially relieve double taxation of distributed corporate profits. At times, the effect can be the total elimination of Canadian tax on dividends. Nonresident shareholders do not get the imputation credit. Accordingly, nonresident shareholders may be subject to a higher combined corporate and personal tax than a Canadian would be.

Relief is granted to United States shareholders by United States treaties with France and the United Kingdom, both of whom also have partially integrated corporate tax systems. In those two treaties, the relief takes the form of a refund to the U.S. shareholder of the appropriate amount of tax paid at the corporate level. In the proposed Canadian treaty, no such refund to U.S. shareholding is provided. However, at least partial relief is granted by the limitation on dividend withholding taxes. It should also be noted that under Canadian law, a nonresident shareholder does not "gross-up" his dividend from a Canadian corporation by the amount of the computation credit. Accordingly, the amount of the U.S. shareholder's taxable dividend is lower than that of a Canadian shareholder.

The Canadian situation is distinguishable in certain respects from that with the United Kingdom and France. The French relief is limited in that it applies only to portfolio investment. Both France and the United Kingdom have generally extended relief to investors from other countries comparable to that extended U.S. investors. The policies of the United Kingdom and Canada are different. The United Kingdom has traditionally welcomed United States investors and the granting of imputation relief is consistent with that philosophy.

In contracts, the Canadians have refused to extend the imputation credit in their treaties. The Canadians are not seeking United States investors in their industries. Also, the Canadians have made what they consider to be a significant concession to the United States in lowering the dividend withholding rate at source to 10 percent from the present 15 percent.

Some concern has been expressed that the treaty without specific relief for U.S. shareholders will be precedent for negotiations with other countries, particularly Germany.

If the Committee considered relief for United States shareholders under imputation systems important, it could urge the Treasury not to agree to future treaties without such relief, at least with certain countries. However, this could tie Treasury's hands and preclude future treaties that on balance may be in the United States national interest.

Canadian investment in United States real property.--The proposed treaty also contains certain provisions that would limit the United States taxation of Canadian investment in United States real estate provided for in the Foreign Investment in United States Real Property Tax Act that was enacted at the end of 1980. As these changes reflect departures from clear policy decisions made by the Congress, we would like to discuss them with you.

Generally, gain realized by a nonresident alien or a foreign corporation from the sale of a capital asset is not subject to United States tax unless the gain is effectively connected with the conduct of a United States trade or business or, in the case of a nonresident alien, he is physically present in the United States for at least 183 days in the taxable year. However, under the Foreign Investment in Real Property Tax Act of 1980, as amended, a nonresident alien or foreign corporation is taxed by the United States on gain from the sale of a United States real property interest as if the gain was effectively connected with a trade or business conducted in the United States. Under the legislation, foreign persons selling stock in a United States corporation having 50 percent or more of its gross assets value comprised of United States real property interests are subject to United States tax on the gain.

The Act generally applies to tax the gain on sales made after June 18, 1980. The legislation specifically overrode real estate rules in existing treaties if those rules conflicted with its provisions. However, the legislation did not apply in those cases until January 1, 1985.

The present treaty contains a reciprocal exemption from tax for gains from the disposition of real estate. Accordingly, under the present treaty, Canadian and United States residents could continue to sell property located in the other country free of local source country tax.

The real estate provision of Article XIII of the proposed treaty generally would not restrict the right of the United States to tax the gain from the sale of United States real estate directly held by Canadian investors. It also retains the right of the United States to impose relevant reporting or withholding requirements. However, the right of the United States to tax Canadian investors under the legislation on the sales of their interests in United States real estate is limited in several respects described in Article XIII.

First, under the legislation a foreign investor is taxed on his entire gain realized on the sale of United States real estate regardless of when purchased. Congress decided not to give a step-up in basis (or fresh start) to fair market value as of the effective date of the legislation. Under the proposed treaty, however, gain would in effect only be taxable to the extent it occurred after the treaty goes into force. Taxpayers can show the actual amount of appreciation or use a monthly proration rule.

Second, for purposes of determining whether a corporation is a United States real property holding company, the legislation takes into account all real estate held by the corporation, regardless of whether it is held for use in a business. However, under the treaty, in determining whether an entity's assets consist principally of real property (the Treasury's technical explanation indicates that "principally" means more than 50 percent), business property (other than mines, oil or gas wells, rental property or property used for agriculture or forestry) is not treated as real property. Since it would remain an asset of the corporation, however, it means that the entity might be able to make significant nonbusiness real estate investments in addition to business-related U.S. real estate investments before exceeding the 50 percent test.

Third, the proposed treaty has an entity rule for partnerships, trusts, and estates under which gain from the disposition of an entity would not be taxed unless its assets consisted principally of United States real estate. The Code uses a flow-through rule for partnerships and a foreign investor who sells an interest in a partnership owning United States real estate would be taxed on the portion of the gain attributable to the real estate. Accordingly, Canadian investors could be at an advantage as compared to others. Also, this different system creates additional complexities.

could be at an advantage as compared to others. Also, this different system creates additional complexities.

Fourth, under the proposed treaty, the gain realized by a Canadian resident from the sale of a U.S. real property holding company is taxable by the United States only if the resident owns 10 percent or more of the stock of the company.

Under the Code, the gain is taxable in the case of a publicity traded corporation if the shareholder owns 5 percent and without any minimum percentage holding limitation in the case of a privately held U.S. real property holding corporation. The use of a different standard for determining whether a Canadian investor so considered to be taxable would also create various uncertainties as to the application of many of the rules in the real estate legislation.

Finally, the treaty also includes a provision that would permit one country to tax gains from dispositions of interests in entities owning real property only to the extent that the other country would tax those gains. It is not at all clear why this provision is included in the proposed treaty. It would appear that by operation of this rule, Canada could change the U.S. taxation of Canadian investors merely by changing its real estate legislation (and vice versa).

A few observations are in order with respect to these provisions.

First, these limitations could be substantial in terms of revenue or numbers of affected taxpayers.

Second, the present treaty exempts capital gains from tax and without the proposed treaty this situation would continue until 1985. If ratified this year, the proposed treaty would come into effect as of January 1, 1982, and, under the transitional rule, would generally permit the United States to tax gain realized by Canadians who sell United States real estate on and after January 1, 1983. However, if the proposed treaty is not approved, the real estate legislation would be fully effective without limitation by the provisions of the proposed treaty discussed above.

Third, the provisions are reciprocal. They will operate to protect U.S. investors from Canadian tax on investments in Canadian real property holding companies just as they will operate to protect Canadian investors from U.S. tax on investments in U.S. real property holding companies. It should be noted, however, that the fresh-start basis provided in the treaty will principally be of benefit to Canadian investors in U.S. real estate because the Canadian capital gains tax has a general fresh start as of 1975.

The provisions raise no serious questions as to the conflict between United States tax policy and treaty policy. Of special concern here is the specificity with which particular Congressional decisions are being changed shortly after enactment. If there is sufficient concern, the Committee may wish to approve the treaty subject to the limitation that the legislation will prevail over the treaty with repsect to some or all of these conflicts. Alternatively, clear indications might be given the Treasury Department that the real estate legislation should not be overridden in future treaties.

Exempt organizations.--Unlike other United States tax treaties, the proposed treaty would exempt charitable organizations of either country from tax imposed by the other to the extent they are exempt in their home country. In addition, Canadian private foundations which receive substantially all their support from non-United States persons would be exempt from the 4-percent United States excise tax on income of private foundations. An exemption is also provided for pension funds but the exemption is limited to interest and dividends received from sources within the other country. Accordingly, Canadian pension funds could invest in debt obligations of United States persons and stock of United States corporations free of tax.

It is our understanding that this provision represents a concession primarily to Canadian charities and pension funds. The Committee should be aware that bills were introduced in both Houses of the last Congress and have been introduced in this Congress (S. 502--Messrs. Moynihan and Wallop) and H.R. 3056 (Messrs. Conable and Jenkins) that would grant an even broader exemption to foreign pension plans. Last year's bills were not reported out of Committee. United Kingdom and Dutch pension plans have expressed an interest in the exemption. It can be anticipated that approval of this provision in this treaty will encourage them to seek similar relief.

Foreign tax credit.--The proposed treaty specifically provides that taxes paid under Canada's general corporate income tax system are creditable income taxes under the treaty. However, the proposed treaty only requires the United States to allow the credit under the treaty for the Canadian taxes imposed on Canadian source income. The treaty thus imposes a per country limitation on credits for the Canadian taxes. This is in contrast to the Code overall or worldwide limitation. The treaty also superimposes the special Code limitations (for example, the oil related limitation) on the per country limitation. It should be noted that the additional per country limitation only applies if the taxpayer is claiming benefits under the treaty not creditable under the Code; that is, claiming as Canadian source income which could be treated as United States source under the Code.

The proposed treaty also contains a provision generally found in United States income tax treaties to the effect that it will apply to substantially similar taxes which either country may subsequently impose. It also contains a provision that it will apply to taxes on capital that either country may later impose.

In general, for most taxpayers there appears to be little doubt that the taxes described as creditable under the treaty are creditable in any event. The only significant question as to the creditability under the Code rules of any of the Canadian taxes covered by the treaty appears to be confined to the Canadian corporate tax as it is imposed on income from the exploitation of natural resources. Oil company companies and other natural resource companies are subject to certain special rules which deny them certain deductions in computing their Canadian general corporate tax. The denial of these deductions creates some uncertainty as to whether the tax as imposed on such income qualifies for a foreign tax credit under the Code.

While the proposed treaty would resolve the doubt as to the creditability of the Canadian corporate tax as presently imposed on natural resource income, that treaty credit only applies if Canada does not make substantial changes in the tax. It is understood that the Treasury and the Government of Canada agreed that the general Canadian corporate tax would be considered a substantially similar tax for this purpose if Canada were to enact a low flat-rate tax on natural resource revenues even if that tax were not deductible in computing income under the general rules of Part I of the Canadian Income Tax Act. The Treasury technical explanation indicates that an 8-percent tax on oil and gas production revenues would be consistent with this understanding. It is now understood that the tax may be substantially higher; it may be as high as 16 percent. This leaves unclear the effect of the understanding described in the technical explanation.

Even if the new tax does not throw into question the credit under the treaty, some might question the policy of determining an income tax to be creditable before the Internal Revenue Service has ruled formally on the issue. Further, it could be argued that these determinations should be solely a matter of tax policy and thus should only be determined by the Internal Revenue Service through its normal administrative processes and ultimately by the courts. In this particular case, however, it can also be argued that the economic substance of the tax is sufficiently comparable to United States notions of what constitutes an income tax even with a higher gross receipts tax that it does not require a major departure from applicable tax policy principles to treat the Canadian tax as a creditable tax. Thus, the treaty in this case can be viewed as merely overcoming any possible technical obstacles to the creditability of the Canadian tax under the Code rules.

The proposed treaty would be the third treaty to contain a per country limitation on credits allowed for taxes which would not otherwise qualify for the credit under the Code. This appears to be included because the Treasury's outstanding temporary and proposed regulations defining the foreign tax credit throw certain petroleum taxes into question, and, more importantly, cast doubt on the underlying corporate tax systems as they apply to mineral resource companies. This is consistent with the Senate's reservation on the U.K. treaty. Once again, however, a question is raised as to whether a unilateral legislative solution to the problems involved in the credit for foreign oil taxes might not be ultimately more appropriate than attempting to deal with this problem on a country-by-country basis through bilateral agreement.

Allowance of deductions to United States persons.--The proposed treaty contains two provisions that give United States taxpayers deductions not permitted under the Code. This represents an expansion of general treaty policy, although one of the provisions, the allowance (on a reciprocal basis) of charitable deductions for contributions to Canadian charities is in the present treaty.

The proposed treaty contains a provision that would permit United States persons to deduct expenses incurred in attending business conventions in Canada. At the time this provision was negotiated, deductions for conventions held in all foreign countries, including Canada, were subject to substantial restrictions pursuant to amendments to the Code made by the 1976 Act. However, the Code was amended in 1980 to permit deductions for conventions in Canada and Mexico on the same basis as those held in the United States and its possessions. Accordingly, the treaty provision would no longer have any impact on United States taxpayers attending Canadian conventions. Unless a contrary intention is expressed by the Senate, however, the inclusion of this provision in the treaty could be taken as precedent for other negotiations. (The Jamaican protocol to be discussed this afternoon, also contains a convention provision.) It should be noted that Canada also has statutory provisions denying Canadian taxpayers deductions for attending foreign business conventions, so the principal impact of the provision is to allow Canadians deductions for Canadian tax purposes for attending business conventions in the United States.

The proposed treaty also permits United States persons a deduction for contributions to Canadian charities and Canadian persons a contribution to United States charities. This provision is also in the present treaty.

It has been argued that treaties should not be used to grant deductions to United States persons because they are not necessary to limit double taxation. On the other hand, the special relationship between the United States and Canada may warrant special rules in this case.

Exhibit

Amended Offer to Purchase for Cash

All Shares of Common Stock

of

Hobart Corporation

by

CPE Acquisition Co.

A Wholly Owned Subsidiary of

Canadian Pacific Enterprises (U.S.) Inc.

at

$32.50 Per Share Net

THE OFFER WILL EXPIRE AT 12:01 A.M., NEW YORK CITY TIME, ON SATURDAY, FEBRUARY 21, 1981, UNLESS EXTENDED.

IMPORTANT

Any shareholder desiring to tender all or any portion of his Shares should (1) complete and sign the Letter of Transmittal or a facsimile copy in accordance with the instructions in the Letter of Transmittal and mail or deliver it with his stock certificate(s) and any other required documents to the Depositary or the Forwarding Agent or (2) request his broker, dealer, bank or other nominee to effect the transaction for him. A shareholder having Shares registered in the name of a broker, dealer, bank or other nominee must contact his broker, dealer, bank or other nominee if he desires to tender such Shares.

Questions and requests for assistance or for additional copies of the Offer to Purchase and the Letter of Transmittal may be directed to Georgeson & Co., Inc., the Information Agent, or to the Dealer Manager.

The Dealer Manager for the Offer is:

The First Boston Corporation

February 6, 1981

Except as otherwise stated herein, the information concerning the Company contained herein (including, without limitation, Appendix I) has been taken from or based upon publicly available documents and records on file with the Commission and other publicly available information. Although the Purchaser does not have any knowledge that would indicate that any statement or information contained herein based on such documents and records is untrue, the Purchaser does not take responsibility for the accuracy or completeness of the information concerning the Company contained in such documents and records, or for any failure by the Company to disclose events which may have occurred and may affect the significance or accuracy of any such information but which are unknown to the management of the Purchaser.

9. *Certain Information Concerning the Purchaser, Enterprises (U.S.) and Certain Affiliates of Enterprises (U.S.).* The Purchaser, a Delaware corporation and a wholly owned subsidiary of Enterprises (U.S.), was incorporated on December 10, 1980 for the purpose of acquiring Shares pursuant to the Offer and to date has engaged in no other business. The Purchaser's principal executive offices are located at Suite 1550, One Lincoln Center, Syracuse, New York 13202.

Enterprises (U.S.), a Delaware corporation with its principal executive offices located at Suite 1550, One Lincoln Center, Syracuse, New York 13202, was incorporated in 1978 as Canellus Incorporated and changed to its present name on December 11, 1980. Enterprises (U.S.) is a holding company and is subject to those corporate taxes to which United States corporations are normally subject. As a holding company, Enterprises (U.S.) oversees but does not become involved in the day-to-day operations of its subsidiaries. Its subsidiaries report to it on a regular basis and these reports are consolidated by Enterprises (U.S.) and forwarded on to Enterprises. The subsidiaries of Enterprises (U.S.), Baker Commodities, Inc., Processed Minerals Incorporated and Syracuse China Corporation, operate in the businesses of agriproducts, minerals and commercial china. These businesses are affected by general business conditions, and in the case of Baker Commodities, Inc., by the volatility of the market for agricultural products, particularly tallow, and in the case of Processed Minerals Incorporated, by the volatility of the market for salt. Set forth in Appendix II are the audited financial statements of Enterprises (U.S.) for the fiscal years ended December 31, 1979 and 1978 and the unaudited financial statements of Enterprises (U.S.) for the nine-month periods ended September 30, 1980 and 1979. While the audit of the financial statements for the fiscal year ended December 31, 1980 has not been completed, preliminary indications are that the net income of Enterprises (U.S.) for the fiscal year ended December 31, 1980 will be less than the net income of Enterprises (U.S.) for the fiscal year ended December 31, 1979. Enterprises (U.S.) believes that this decline is due principally to the effect of the factors described above.

Enterprises and certain of its affiliates continuously have under consideration various projects which if pursued would require additional capital. When such projects have been undertaken in the past, it has not been the practice of Enterprises to alter its policy concerning payment of dividends to it by its subsidiaries in order to obtain the necessary additional capital, nor have such projects had a material financial impact on the operations of Enterprises or its affiliates or subsidiaries (including Enterprises (U.S.)).

Enterprises (U.S.) is wholly owned by Canellus International B.V. ("B.V."), a holding company incorporated in The Netherlands in 1978, with its principal offices located at Seattleweg 7, Rotterdam, The Netherlands. B.V. was incorporated by Canadian Pacific Enterprises Limited ("Enterprises") as a holding company for the purpose of (i) acquiring, either directly or indirectly, other businesses and (ii) centralizing all non-Canadian holdings of Enterprises in one entity in order to maintain efficient control over an expanding volume of non-Canadian holdings. Certain tax advantages also may be obtained as a result of B.V. having been incorporated in The Netherlands. Pursuant to a tax treaty between the United States and The Netherlands, the withholding tax on a dividend paid by a corporation incorporated in the United States in respect of shares owned by a corporation incorporated in The Netherlands (assuming the ownership of 25% or more of such shares) is generally 5% of the amount of the dividend. The rate of the withholding tax which is payable on dividends of a United States corporation paid in respect of shares owned by a Canadian corporation is 15% (although if a treaty that has been signed by Canada and the United States becomes operative (and assuming the ownership exceeds 10% of such shares) this rate would be reduced to 10%).

All of the outstanding stock of B.V. is owned by Enterprises, a Canadian corporation having its principal executive offices at Suite 1900, Place du Canada, Montreal, Quebec, Canada H3B 2N2. Enterprises, incorporated under the laws of Canada in 1962, conducts a diversified international business through subsidiaries operating principally in Canada and the United States. Enterprises, through its subsidiaries, is engaged in the exploration for and the production of oil, natural gas and related hydrocarbons; is a major producer of zinc and lead and a producer of other metals and minerals; manufactures and sells pulp and paper, building products and lumber; produces iron, steel and steel products, manufactures commercial and industrial equipment and machinery and engages in engineering and construction activities; owns, manages and develops commercial and industrial real estate; processes and markets food and agricultural products; is engaged in the insurance of commercial and industrial risks; holds an investment portfolio; and is engaged in other businesses, including hotel operations. Enterprises is a management company which expects its subsidiaries to operate their own businesses. Its subsidiaries report to it on a regular basis. Enterprises provides economic and financial advice for its subsidiaries but does not become involved in their day-to-day operations. Certain of Enterprises' United States operations are carried on by the subsidiaries of Enterprises (U.S.). Enterprises' common shares are listed on the Montreal, Toronto, Vancouver and other stock exchanges as well as the NYSE. In the fiscal year ended December 31, 1979, Enterprises had consolidated revenues of $5,333 million and consolidated net income of $420 million and at that date had consolidated shareholders' equity of $1,907 million, all as stated in Canadian dollars.

Approximately 71% of Enterprises' common shares are owned by CPL. CPL, incorporated under the laws of Canada in 1881, with its principal executive offices at 910 Peel Street, P. O. Box 6042, Station A, Montreal, Quebec, Canada H3C 3E4, directly and through subsidiaries, carries on transportation and related rail, trucking, shipping, airline and telecommunication enterprises. The ordinary stock and certain other securities of CPL are listed on the NYSE and other stock exchanges. In the fiscal year ended December 31, 1979, CPL (including its interest in Enterprises) had consolidated revenues of $8,388 million and consolidated net income of $508 million and at that date had consolidated shareholders' equity of $2,988 million, all as stated in Canadian dollars.

CPL and Enterprises, since June, 1980, have been subject to the informational filing requirements of the Exchange Act and in accordance therewith file reports and other information with the Commission relating to their business, financial statements and other matters. Information, as of particular dates, concerning CPL's and Enterprises' directors and officers, their remuneration, options granted to them, the principal holders of CPL's and Enterprises' securities and any material interest of such persons in transactions with CPL and Enterprises is disclosed in materials filed with the Commission. Such reports and other information may be inspected, and copies may be obtained at the offices of the Commission and the NYSE, in the same manner as set forth with respect to the Company in Section 8.

The name, citizenship, business address and principal occupation or employment of each of the executive officers and directors of the Purchaser, Enterprises (U.S.), Enterprises and CPL are set forth in Schedules A, B, C and D hereto, respectively.

Mr. James M. Andreoli, a director of Enterprises (U.S.), owns 1,000 Shares that he purchased on January 24, 1980. On December 10, 1980, 100 Shares were purchased in the open market on behalf of the Purchaser. Other than as stated in the two preceding sentences, none of the Purchaser, Enterprises (U.S.), B.V., Enterprises or CPL or, to the best knowledge of the Purchaser, any of the persons listed in Schedules A, B, C or D hereto, or any associate or majority owned subsidiary of the Purchaser, Enterprises (U.S.), B.V., Enterprises or CPL or any of the persons so listed, owns or has a right to acquire directly or indirectly any equity security of the Company, and none of the Purchaser, Enterprises (U.S.), B.V., Enterprises or CPL or, to the best knowledge of the Purchaser, any of the other persons referred to above, or any of the respective executive officers, directors or subsidiaries of any of the foregoing, has effected any transaction in any equity security of the Company during the past 60 days.