§ 806.15 Foreign direct investment in
the United States.

(a) Specific definitions—(1) Foreign di-
rect investment in the United States
means the ownership or control, di-
rectly or indirectly, by one foreign per-
son of 10 per centum or more of the
voting securities of an incorporated
U.S. business enterprise or an equiva-
 lent interest in an unincorporated U.S.
business enterprise, including a branch.

(2) U.S. affiliate means an affiliate lo-
cated in the United States in which a
foreign person has a direct investment.

(3) Foreign parent means the foreign
person, or the first person outside the
United States in a foreign chain of
ownership, which has direct invest-
ment in a U.S. business enterprise, in-
cluding a branch.

(4) Affiliated foreign group means (i)
the foreign parent, (ii) any foreign per-
son, proceeding up the foreign parent’s
ownership chain, which owns more
than 50 per centum of the person below
it up to and including that person
which is not owned more than 50 per
centum by another foreign person, and
(iii) any foreign person, proceeding
down the ownership chain(s) of each of
these members, which is owned more
than 50 per centum by the person above
it.

(5) Foreign affiliate of foreign parent
means, with reference to a given U.S.
affiliate, any member of the affiliated
foreign group owning the affiliate that
is not a foreign parent of the affiliate.

(b) Beneficial, not record, ownership is
the basis of the reporting criteria. In
those cases where a U.S. affiliate is
also required to identify the ultimate
beneficial owner (UBO) of the foreign
investment, if the UBO is an indi-
vidual, only the country of location of
the individual must be given.
(c) *Bearer shares.* If the ownership in a U.S. affiliate by any owner in the ownership chain from the U.S. affiliate up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of the company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with nonpublicly traded bearer shares, identifying the foreign parent or the UBO as “bearer shares” is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors or any other official or intermediary.

(d) *Aggregation of real estate investments.* A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

(e) *Consolidated reporting by U.S. affiliates.* A U.S. affiliate shall file on a fully consolidated basis, including in the consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 percent of the outstanding voting stock, unless the instructions for a given report form specifically provide otherwise. However, separate reports may be filed where a given U.S. affiliate is not normally consolidated due to unrelated operations or lack of control, provided written permission has been requested from and granted by BEA.

(f) The place and time for filing, and specific instructions and definitions relating to, a given report form will be given on the report form. Reports are required even though the foreign person’s equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

(g) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, sales or gross operating revenues excluding sales taxes, and net income after income taxes, whether positive or negative, although different or special criteria may be specified for a given report form. If any one of the three items exceeds the exemption level and if the statistical data requested in the report are applicable to the entity being reported, then a report must be filed. Since these items may not have to be reported on a given form, a person claiming exemption from filing a given report form must furnish a certification as to the levels of the items on which the exemption is based or must certify that the data requested are not applicable. The exemption level tests shall be applied as outlined below.

1. For quarterly report forms, as to the assets test, reports are required beginning with the quarter in which total assets exceed the exemption level; as to the test for sales (revenues) and net income after income taxes, reports are required for each quarter of a year in which the annual amount of these items exceeds or can be expected to exceed the exemption level. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

2. For report forms requesting annual data after the close of the year in question, the test shall be whether any one of the three items exceeded the exemption level during that year. If total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

The number and title of each report form, its exemption level and other reporting criteria, if any, pertaining to it, are given below.


1. *Annual report form.* BE–15—Annual Survey of Foreign Direct Investment in
the United States: One report is required for each consolidated U.S. affiliate exceeding an exemption level of $40 million. Form BE–15A must be filed by each majority-owned U.S. affiliate (a “majority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $275 million (positive or negative). Form BE–15B must be filed by each majority-owned U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $120 million (positive or negative) but no one item exceeds $275 million (positive or negative), and by each minority-owned U.S. affiliate (a “minority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $120 million (positive or negative). Form BE–15(EZ) must be filed every other year by each U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $40 million (positive or negative) but no one item exceeds $120 million (positive or negative). U.S. affiliates will be mailed Form BE–15(EZ) in years when they are required to file; in alternate years, these U.S. affiliates will be mailed a letter confirming that they are not required to file: in alternate years, these U.S. affiliates will be mailed a letter confirming that they are not required to file and asking them to update their contact information with BEA. A BE–15 Claim for Exemption must be filed by each U.S. affiliate to claim exemption from filing a BE–15A, BE–15B, or BE–15(EZ). Following an initial filing, the BE–15 Claim for Exemption is not required annually from those U.S. affiliates that meet the stated exemption criteria from year to year.

(j) Other report forms. (1) [Reserved]
(2) BE–12—Benchmark Survey of Foreign Direct Investment in the United States: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of foreign direct investment in the United States shall be conducted in 1980, 1987, and every fifth year thereafter. The survey is referred to as the “BE–12.” Exemption levels, specific requirements for, and the year of coverage of, a given BE–12 Survey may be found in §806.17.