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Treasury Claims Power to Seize Gold & Silver -- and everything else

By: Chris Powell, Gold Anti-Trust Action Committee Inc.

-- August 20, 2005

Dear Friend of GATA and Gold:

The U.S. Government has the authority to prohibit the private possession of gold and silver coin and bullion by U.S. citizens during wartime, and, during wartime and declared emergencies, to freeze their ownership of shares of mining companies, the Treasury Department has told the Gold Anti-Trust Action Committee.

But gold and silver advocates shouldn't feel too picked on. For the U.S. Government claims the authority in declared emergencies to seize or freeze just about everything else that might be considered a financial instrument.

The Treasury Department's assertions came in a



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letter dated August 12 and written by Sean M. Thornton, chief counsel for the department's Office of Foreign Assets Control, who replied to questions GATA posed to the department in January. It took GATA six months and a little prodding to get answers from the Treasury, but the Treasury's reply, when it came, was remarkably comprehensive and candid.

The government's authority to interfere with the ownership of gold, silver, and mining shares arises, Thornton wrote, from the Trading With the Enemy Act, which became law in 1917 during World War I and applies during declared wars, and from 1977's International Emergency Economic Powers Act, which can be applied without declared wars.

While the Trading With the Enemy Act authorizes the government to interfere with the ownership of gold and silver particularly, it also applies to all forms of currency and all securities. So the Treasury official stressed that it could be applied not just to shares of gold and silver mining companies but to the shares of all companies in which there is a foreign ownership interest. Further, there is no requirement in the law that the targets of the government's interference must have some connection to the declared enemies of the United States, or, really, some connection to foreign ownership. Anything that can be construed as a financial instrument, no matter how innocently it has been used, is subject to seizure under the Trading With the Enemy Act and the International Emergency

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Economic Powers Act.

Having just gone through a controversy about a Supreme Court decision about government's power of eminent domain, most Americans may be surprised to learn that the Trading With the Enemy Act and the International Emergency Economic Powers Act could expropriate them instantly and far more broadly without any of the due process extended to parties in eminent domain cases. All that is needed is a presidential proclamation of an emergency of some kind -- and of course Americans lately have been living in a state of perpetual emergency.

When the Trading With the Enemy Act was passed in 1917, gold and silver formed part of the official currency of the United States and were essential to ordinary commerce, so perhaps an argument could be made then against "hoarding," even if "hoarding" could not be well defined. That is no longer the case; the United States has officially disavowed gold and silver as money and they no longer have a meaningful role in commerce. (GATA is working on that.) So gold and silver investors may want to ask their members of Congress to seek repeal of the statutes that give the government the authority to interfere with the private ownership of gold and silver, emergencies or not.

And ordinary citizens with no particular interest in gold and silver may want to ask their members of Congress to reconsider these statutes simply for being wildly tyrannical.

GATA's correspondence with the Treasury

Department is appended.

CHRIS POWELL, Secretary/Treasurer
Gold Anti-Trust Action Committee Inc.

* * *

January 20, 2005

Roberta K. McInerney
Assistant General Counsel / Banking and Finance
Department of the Treasury
Washington, D.C. 20220

Dear Ms. McInerney:

Michael Kirk of U.S. Rep. John B. Larson's office has forwarded to me your letter to him of December 17, which answered my e-mailed inquiry to him about forcible redemption by the Treasury Department of gold and silver coins held by private citizens. You replied that a statute empowering the Treasury Department to do that, 12 U.S.C. Section 248(n), had been repealed.

But since reading your letter I have learned of a similar statute:
Title 12, Chapter 2, Subchapter IV, Section 95a, which provides in part:

"During the time of war, the president may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise -- (A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities. ..."

Section 95a further authorizes the president to "prevent" the "use" by U.S. citizens of "any property in which a foreign country or a national thereof has any interest."

These provisions are of the greatest concern to investors in gold and silver bullion, coins, and shares of gold and silver mining companies, and to those companies themselves. So the Gold Anti-Trust Action Committee urgently requests that the Treasury Department explain how it construes these provisions. Particularly, we'd like to know:

* How does the Treasury Department construe "the time of war"? How can gold and silver investors know when the powers described in Section 95a are in operation or likely to come into operation? Are formal declarations of war by Congress required here, or lesser declarations, or none at all, but rather declarations made only by the president?

* How does the Treasury Department construe "hoarding"? Does it include the ordinary collection of gold and silver coins, numismatic or not, and bullion by U.S. citizens, businesses, and corporations, absent any collaboration with enemies of the United States?

* Does the Treasury Department construe Section 95a to empower the president to interfere with the ownership of shares in gold and silver mining companies merely because shares of such companies also might be owned by foreign nationals or foreign governments, at war with the United States or not? Under what

circumstances would the president be so empowered?

In essence, we need to know whether Section 95a contemplates the instant destruction of gold and silver investors and the precious metals mining industry in the United States. So the Gold Anti-Trust Action Committee asks the Treasury Department for a meeting with the officials who might become responsible for implementing Section 95a, at which we might discuss the concerns of precious metals investors and mining companies. Would you kindly forward our request to the appropriate people?

Thanks for your help.

CHRIS POWELL, Secretary/Treasurer
Gold Anti-Trust Action Committee Inc.

* * *

February 28, 2005

Mr. Chris Powell
Gold Anti-Trust Action Committee Inc.
Manchester, Connecticut

Dear Mr. Powell:

Thank you for your follow up letter dated January 20, 2005, requesting information about how the Treasury Department interprets aspects of Title 12, Section 95a, of the U.S. Code.

Most of the questions you raise fall within the jurisdiction of Treasury's Office of Foreign Assets Control (OFAC). Consequently, I wanted to let you know that I have forwarded your letter to OFAC's Office of the Chief Counsel for a response. The chief counsel's

office will ensure that you receive a response to your letter.

If you have questions about the status of your request, please call Mark Monborne, OFAC's acting chief counsel.

Thank you for taking the time to write.

Sincerely,

Roberta K. McInerney
Assistant General Counsel (Banking and Finance)
U.S. Department of the Treasury
Washington, D.C. 20220

* * *

August 12, 2005

Mr. Chris Powell
Gold Anti-Trust Action Committee Inc.
Manchester, Connecticut

Dear Mr. Powell:

Your letters to Roberta McInerney, assistant general counsel (banking and finance), dated January 20 and July 17, 2005, have been forwarded to me for response. I recently became the chief counsel (foreign assets control).

The U.S. Code provision that you reference, 12 U.S.C. Sec. 95a, is a duplicate codification of Section 5 of the Trading with the Enemy Act of 1917, 50 U.S.C. App. Secs. 1-44 ("TWEA"), with respect to which my office bears responsibility for interpreting.

As you may be aware, Congress enacted TWEA during World War I to prevent certain transactions that might be of advantage to an enemy during wartime. During World War II the Treasury Department

implemented extensive punitive blockings of Axis assets and protective blockings of Allied assets.

In 1950 the United States imposed economic sanctions against the People's Republic of China as a result of the Korean emergency to prevent, among other things, Chinese acquisition of foreign exchange through transactions with Americans. The Department of the Treasury's Office of Foreign Assets Control ("OFAC") began enforcing foreign asset control programs in the 1950s. Today the only economic sanctions programs administered by OFAC under TWEA are with respect to Cuba, North Korea, and certain third-country transfers of sensitive materials.

You have asked how the Treasury Department construes the term "the time of war," which appears in section 5 (b) (1) of TWEA. Although TWEA does not include a definition of the term "during the time of war," it does include definitions for the terms "the beginning of the war" and "end of the war." The words "the beginning of the war" are deemed to mean "midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war." The words "end of the war" are deemed to mean "the date of proclamation of exchange of ratifications of the treaty of peace, unless the president shall, by proclamation, declare a prior date."

Thus the phrase "during the time of war" would seem to cover the period between "the beginning of the war" and the "end of the war."

Since this period cannot come into existence

without some form of congressional declaration, it would appear that TWEA -- with the exception of its present applicability to the Cuba, North Korea, and transaction control programs referenced above* - - applies only to situations involving a declared state of war. In exercising any of the specific powers available to him under TWEA during the time of war, the president would issue an executive order or other similar instrument generally made available through publication in the Federal Register.

(* -- From the early 1930s until 1977, when the International Emergency Economic Powers Act was enacted, TWEA applied not only in times of war but also in situations in which the president declared a peacetime national emergency. Pre-existing emergencies declared with respect to Cuba and North Korea and certain transaction controls were grandfathered, which explains why TWEA still serves as the basis for those sanctions programs, even though the United States is presently not in a state of war with respect to any of the affected countries.)

The construction of the term "hoarding," as used in section 5(b)(1) of TWEA, would depend on how the president chooses to exercise his authority with respect to hoarding in any particular instance.

In making any decisions under the authorities conferred by TWEA, the president would, of course, be taking steps to address threats to our national security during a time of war. In the past, the president has used TWEA or TWEA-like authorities

to criminalize hoarding. See generally *Bauer v. United States*, 244 F.2d 794 (9th Cir. 1957). Today, however, such activity is not restricted under the only sanctions programs in effect pursuant to TWEA -- i.e., the Cuba, North Korea, and transactions-control programs.

If, during a time of war, the president expressly chose to restrict the hoarding of gold or silver, he could do so.

Among the many factors the president would likely consider before taking such action, however, is the fact that the U.S. Government now mints and issues gold and silver coins to meet public demand for both numismatic and investment purposes.

(See 31 U.S.C. § 5112(a)(7)-(10) & (e)-(i).)

You also have asked about the president's ability to "interfere with the ownership of shares in gold and silver mining companies merely because shares of such companies also might be owned by foreign nationals or foreign governments, at war with the United States or not."

Under TWEA during times of war -- and also under the International Emergency Economic Powers Act, 50 U.S.C. Secs. 1701-05 ("IEEPA") during peacetime national emergencies -- the president has broad powers to regulate property in which there exists a foreign interest. See TWEA § 5(b)(1)(B); IEEPA Secs. 1702 (a) (1) (B).

Consequently, the president may restrict shares in any company owned by foreign persons consistent with the purposes of any declared

emergency.

In this respect, foreign-owned shares in gold and silver mining companies are no different from foreign-owned shares in companies in any other industry.

Finally, you raise concerns about the "instant destruction of gold and silver investors and the precious metals mining industry in the United States." In the establishment and implementation of sanctions, the U.S. Government is always mindful of the domestic impact of restrictions meant to serve national security and foreign policy purposes. Just as the U.S. Government has been mindful of the practical impact that sanctions have on various service and manufacturing industries, it would also be mindful of the potential impact of sanctions with respect to the markets and industries associated with precious metals.

I hope you find this letter instructive. Thank you for your interest. If I can be of any further assistance, please call me.

Sincerely,

Sean M. Thornton
Chief Counsel (Foreign Assets Control)
U.S. Department of the Treasury
Washington, D.C. 20220

-- Posted Sunday, 21 August 2005

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