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United Mine Workers of America

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DEVELOPMENT OF FOREIGN COAL BY AMERICAN CORPORATIONS

BRUCE BOYENS*

I. INTRODUCTION

In April 1977, President Carter announced his National Energy Plan, with American coal as the cornerstone of our energy future. Optimistic forecasts by the United Nations in 1978 and the World Coal Study Group two years later predicted that by 1984 the United States would increase its coal exports to Europe alone by thirty-five million tons per year. Labor unrest in Poland and Australia in the late 1970s and early 1980s caused American coal exports to jump to a record 110 million tons in 1981, and contributed to a rush by some corporations to develop and expand U.S. deep water ports export capabilities. A. T. Massey announced an expansion investment of over 121 million dollars for its Hampton Roads, Virginia facility. While the Harvard Business Energy Project predicted a modest four to five percent per year coal growth increase, some coal analysts predicted greater sustained growth. Numerous mines in America were visited by Japanese, Korean, French, Finnish, and other foreign investors searching for short-term and long-term coal supplies. Coal was feeling its oats again. The American coal industry was gearing up to retain and, in some areas, assume the kingly position it once held in our energy dependent world.

Today, however, the bloom is very definitely off the rose. The American coal mining industry which produced record amounts of coal in 1984, is plagued by overcapacity and soft prices. Profits are scarce, one-third of the workforce is out of work, and American exports keep dwindling. Coal exports were down to seventy-five million tons in 1983 and are projected to be lower in 1984. Sweden announced that the United States’ share of its coal imports will drop from fifty to twenty percent of Sweden's consumption. Energy Ventures Analysis, Inc., a coal consul-


1 Business Week, Feb. 27, 1984, at 57-60.

2 Id.
tant group, predicts Japanese imports of United States coal will drop to two million tons by 1990. The First Boston Corporation, a major coal investor, says that American coal costs about ten dollars more per ton than coal from Australia, South Africa, or Poland.\textsuperscript{3} The National Coal Association and many coal market analysts flatly state that the United States will never regain its prominence as a coal producer unless "something is done."

What went wrong? Why are some American coal consumers importing foreign coal? Why are American corporations investing large amounts of capital to develop coal mines and coal reserves overseas? Finally, what does all of this mean for the United States' ability to export coal, to maintain a stable coal workforce, and to invest coal money here and not abroad? The following Essay is intended to alert the reader to the problem of the export of American capital and coal mining jobs, and the effect of this practice on the American coal industry. By no means is this Essay intended to be an exhaustive study, but it is intended to make the reader pause and think about a very real and potentially dangerous threat to a basic American industry which is vital to a strong Appalachian and national economy.

II. BACKGROUND—FOREIGN INVESTMENTS

In 1950, American corporations invested twelve billion dollars in various foreign investment ventures. By 1980, American corporate foreign investments had increased sixteen times to approximately 192 billion dollars. With these investments, the total overseas output of American multinational corporations exceeded the gross domestic product of every country except the United States and the Soviet Union.\textsuperscript{4}

A major reason for large American corporate investments overseas may lie in the way foreign investments are taxed by our government. The federal tax liability for an American corporation's foreign investments is offset on a dollar for dollar basis by the amount of foreign government taxes on that investment. Additionally, "transfer pricing" allows American corporations to defer federal taxes until foreign-generated profits are realized. Transfer pricing allows some corporations to pay no United States taxes on foreign investments as long as these profits are invested overseas. In 1972, these tax credits resulted in tax collections by the Treasury of only 1.5 billion dollars on over twenty-four billion dollars for corporate earnings, or a five percent tax rate.\textsuperscript{5}

Therefore, it comes as no surprise that in 1979, the profits of American multinational corporations from their foreign investments were quite high. As examples, Ford Motor Company and Coca Cola realized, respectively, ninety-four and sixty-three percent of their profits from overseas investments. Citicorp, a primary banking institution which arranges loan monies for American corporate investments

\textsuperscript{3} Id.
\textsuperscript{5} B. BLUESTONE & B. HARRISON, THE DEINDUSTRIALIZATION OF AMERICA (1982).
abroad, realized eighty-three percent of its profits as a result of foreign investment ventures.\(^6\)

Certain authors have said that for every one billion dollars of foreign corporate investments, 26,500 domestic jobs are eliminated.\(^7\) The job areas and skills most affected are machinists, machine operators, craft persons, and clerical workers. The impact of foreign investments on American workers is not illusory, but is faced by them on a daily basis both at the unemployment office, and as a consumer. Moreover, twenty-nine percent of all imports to our country is the result of American-based multinational corporate investments.\(^8\) These statistics, coupled with the alarming propensity of American corporations to sell or license their coal technology to foreign countries in order to realize both a positive cash flow and quick profits, demonstrate the serious threat to domestic workforce employment levels and corporate tax collections posed by foreign investments by American corporations.\(^9\)

III. THE AMERICAN COAL INDUSTRY FOREIGN INVESTMENTS AND COMPETITION

A. Generally

At present, the primary competition to American coal comes from Australia, Canada, South Africa, and Poland, with future competition coming from Columbia and, quite possibly, China.\(^10\) Of these competitors, all countries except Australia and China have imported coal into the United States at one time or another. The investment of American dollars into the coal concerns of Columbia, Canada, and South Africa has been the impetus for the importation of coal from those countries. If China enters the Pacific rim export markets, the American coal miner can thank American-based Occidental Petroleum (Island Creek Coal Company) for this threatening competition. With American coal exports declining from a high of one hundred ten million short tons in 1981 to an estimated sixty-five million short tons in 1984,\(^11\) unemployed coal miners should rightly question the social conscience and patriotism of American corporations which engage in this blinding drive toward higher and higher profits from foreign investment.

However, American corporations which operate coal mines in this country may have legitimate complaints concerning impediments to their ability to export coal and invest their dollars in domestic coal development. Their argument is simple. If domestic investments in coal were profitable and opened up lucrative export

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\(^6\) Id.


\(^8\) B. BLUESTONE & B. HARRISON, supra note 5.


\(^11\) Id.
markets, then United States corporations would not be investing in foreign coal development which directly competes with both domestic and foreign markets. Some commonly cited impediments are:

1. Rail shipping costs of ten to fifteen dollars per ton, due to the railroad monopoly, make American coal non-competitive after it leaves the mine;¹²
2. Multinational banks make low-interest loans to foreign governments to prop up government owned or sheltered mining companies;¹³
3. American coal producers tend to wait for long-term contracts before investing large sums of money in domestic coal development, while investing their money overseas prior to obtaining long-term contracts there;¹⁴
4. Coal consumers in many instances are choosing lower quality foreign coal (in terms of BTU value, ash content, and so forth) rather than high quality domestic coal. This results in short-term savings on coal costs, but potential long-term losses because of damage to the combustion and environmental systems; and
5. Foreign investments by U.S. corporations are attractive and profitable due to tax liabilities here and pro-foreign investment tax credits.

Other common complaints perceived as domestic investment impediments are permitting and leasing regulations, permitting costs, health and safety regulations, and health and safety cost factors. Simply put, American corporations appear to be more concerned with a high return on their invested dollar than with efforts to remove these impediments to domestic coal investment and development.

B. Two Case Examples and Their Impact

1. Exxon—Cerrejon Projects

This coal development project can correctly be named Exxon’s “Columbian Connection.” Although the actual number of dollars invested may never be known, it is estimated that Exxon’s total investment will be approximately three billion dollars. The investment covers approximately 12,000 employees at peak employment and projected production levels of five million tons in 1984, fifteen million tons in 1990, and forty-five to fifty-four million tons by the year 2000. The investment also includes the development of rail and other internal transportation needs, as well as export facilities. The Colombian government will take control of the project by the year 2009.¹⁶

While much of this coal is to be consumed domestically in Colombia, coal has already been sold to Spain, Ireland, Puerto Rico, and, most notably, to Florida

¹² Business Week, Feb. 27, 1984, at 57-60.
¹⁴ Bailey, supra note 13.
¹⁵ Id.
¹⁶ Business Week, Feb. 27, 1984, at 57-60.
Power in America. The short-term effects of these sales have hurt an American resurgence in European markets. Colombia’s public declaration of its intent to capture ten percent (fifty million short tons) of the world market export share by the year 2000 is disconcerting to American coal miners." Also, Exxon has announced plans to compete in American gulfport markets, in addition to Florida Power, which could adversely affect both Eastern and Western United States coal suppliers.

The "rules of the game," as set down by the Colombian government for such investments, can be summarized as follows:

1. Foreign investment is welcome;
2. Flexibility in contracting for each project is the key and it can be accomplished in several ways—contracts of association, service contracts, joint ventures, production sharing agreements, and many others;
3. Generally, both national and international tenders will be requested with the objective of obtaining the best combination of conditions in each case (government to government negotiations can be an exception to this policy);
4. Colombian equity should be at least fifty percent;
5. Depending on the specific characteristics of each project, additional compensations from the foreign partner, such as royalties, will be required;
6. There will be no restrictions on profit remittances to foreign investors; and
7. The Colombian partner's participation in all main decisions of the projects and in the marketing of the coal produced must be proportional to its share in the equity.

Also, the central government of Columbia has recently issued new general policies providing additional incentives to foreign investment in the country. Given these investment rules, our good neighbor, Exxon, has readily invested its American dollars into a foreign country while curtailing operations and production at its American coal mines.

2. Occidental Petroleum—China

For a total investment of 580 million dollars, Occidental Petroleum hopes to reach a production level of fifteen million tons per year when its China mine gets underway by 1993. The production potential of this mine by the year 2000 is slated to reach forty-five million tons per year. The Chinese government is to take over the mine in thirty years. Occidental's investment also includes the development of rail and other internal transportation needs, as well as export facilities. The coal is initially scheduled to be consumed domestically in China, but the Chinese plan...
to compete in Pacific rim markets, which will directly and adversely impact Utah, Colorado, and New Mexico coal.\textsuperscript{20}

As an interesting twist to its investment, Occidental has agreed to pay the Chinese government the difference between the average monthly wage of a Chinese miner (approximately twenty-five dollars a month) and the agreed-to wage of an American coal miner (twelve dollars per hour).\textsuperscript{21} The result of this agreement is that the Chinese government will receive approximately $1,900 per month per worker. To an unemployed American coal miner, especially one who has been laid off, Occidental's deal with China must be particularly galling.

3. Impacts—American Job Losses

If one utilizes the previous premise that each one billion dollars of foreign investment equates to 26,500 domestic job losses, the foregoing Occidental and Exxon investments equal 93,000 lost American jobs. On the export side, as an illustration, the loss of jobs directly due to the thirty-five million ton decline in domestic coal exports from 1981 to 1983 can be demonstrated:

\begin{align*}
\text{Over 14,000 underground jobs lost} \\
11.30 & \quad \text{Average production per minute per day} \\
\times 220 & \quad \text{Work days per year} \\
2,486 & \quad \text{Tonnage produced per miner per year} \\
\frac{35,000,000 \text{ tons}}{} & = 14,078.841 \text{ jobs lost} \\
2,486 & \\
\text{Over 8,700 total jobs lost (this calculation includes both underground and surface production)} \\
18.25 & \quad \text{Average production per miner per day} \\
\times 220 & \quad \text{Work days per year} \\
4,015 & \quad \text{Tonnage produced per miner per year} \\
\frac{35,000,000 \text{ tons}}{} & = 8,717.31 \text{ jobs lost} \\
4,015 & \\
\end{align*}

With unemployment unconscionably high in the coal fields, these figures bode an ill wind for future American coal employment and production figures.

IV. Conclusion

The alarming premise of my conclusion to this Essay is that there is no panacea for this direct threat to the American coal industry. With over fifty thousand coal

\textsuperscript{20} Time Magazine, May 14, 1984.

miners unemployed today, and untold additional numbers of persons whose unemployment is indirectly due to the stagnation of a major American industry, the "solutions" are as numerous as the number of economists and coal market analysts. However, my recommended approach to the problem is simple. The outflow of American coal capital and coal jobs to foreign countries must stop.

It is very disturbing that an American-financed foreign coal concern, supported by one of the largest corporations in the world, has used American capital to directly compete in American markets. Equally disturbing is the fact that Florida Power purchased its coal through this "Colombian connection." Also, Florida Power and Jacksonville Electric Authority are presently soliciting supplies of three million tons annually, and each electric company has publicly stated that it will buy "foreign" if that bid is the cheapest. With coal-related unemployment in the Utah coal fields running fifty percent, the Chinese coal development will certainly impact directly on Utah's ability to compete in Pacific rim markets.

In sum, the following suggestions are offered to provide points of discussion for industry, labor, government, and citizen group leaders to enhance American coal export goals and to stem the export of American capital and jobs overseas. These suggestions are:

1. Establish a Coal or Mineral Policy Office in the Executive Office of the President in order to effectuate and publicize a workable national energy policy with the cooperation of industry, labor, and citizen groups;
2. Change tax laws in order to implement tax disincentives rather than credits on foreign investments, and create greater tax incentives for investing in domestic coal development;
3. Increase import tariffs on coal produced at American-financed foreign mines, and establish a user tax on American coal buyers who utilize such coal;
4. Insure that coal sold to public utilities is compatible with environmental and combustion systems;
5. Increase oversight of taxpayer's money available to American-based lending agencies who presently utilize these monies to help finance foreign government owned or sheltered mining operations;
6. Nationalize or break the monopolistic practices of railroads by requiring long-term low cost transportation contracts when transporting coal or other energy fuel resources;
7. Encourage prudent domestic capital investments coupled with long-term public utility coal contracts to avoid the constant boom/bust cycle of coal;
8. Require multinational corporations to pay for all social costs (such as worker retraining, relocation, and severance pay) when it can be shown that American-based capital has caused displacement of workers due to foreign investments which directly or indirectly cause their unemployment; and
9. Greatly restrict the licensing for profit of coal technology abroad.

These suggestions are beginning points for discussion which hopefully will in-

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22 Coal Week, July 2, 1984, at 1.
crease public awareness of a serious problem facing the American coal industry today. Not only do coal producers and coal miners have a direct stake in the development of foreign coal reserves, but all citizens of America must organize to prevent American-based multinational corporations from adversely disrupting the lifeblood of two institutions—the American coal industry and the American coal miner.