

June 23, 1945.

MEMORANDUM

Article V, Section 4, of the Articles of Agreement of the Fund, which deals with the waiver of conditions on which member countries may purchase foreign exchange from the Fund, permits the Fund to take into consideration a member's willingness to pledge as collateral security gold, silver, securities, or other acceptable assets. Article IX requires certain privileges and immunities to be granted the Fund by the members, and in this connection a question has been raised whether the Fund could accept goods as collateral security and import them into the United States for sale here in contravention of the tariff laws, of the narcotic laws, or of the sanitary laws,

The first section of Article IX imposes a limitation upon the scope of the privileges and immunities required to be conferred upon the Fund. It reads:

"To enable the Fund to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Fund in the territories of each member."
(Underseoring supplied)

It is not the function of the Fund to interfere with laws which are in effect in other countries. It is not designed to have any direct effect on tariff laws and it is not designed to have any effect whatever, either direct or indirect, on laws relating to narcotics, sanitation, etc.

It is not necessary, however, to rely upon this general limitation in reaching the conclusion that the question raised above must be answered in the negative.

With respect to tariffs, Article IX, Section 9(a), provides that

"The Fund, its assets, property *** shall be immune *** from all customs duties."

This language was prepared at Bretton Woods by the Drafting Committee of Commission I and was reported by that Committee to the Commission where it was approved and recommended for adoption by the Conference. The Conference acted favorably upon the Commission's report. In transmitting the draft of the Articles of Agreement, the Drafting Committee included in its report the following statements:

"~~was~~ the Drafting Committee, in submitting the text of Article IX, Section 10 (our numeration) dealing with immunities from taxation, desires to place on record certain assumptions regarding its interpretation of the intention underlying this Article. These assumptions are as follows: (a) The Fund is not entitled to import goods free of customs duty without any restriction on their subsequent sale in the country to which they were imported. (b) The Fund enjoys no exemption from duties or taxes which form part of the price of goods sold. (c) The Fund enjoys no exemption from taxes or duties which are in fact no more than charges for services rendered." (Underlining supplied)

Obviously, the customs immunity is intended to cover only such materials as may be imported by the Fund for its own consumption and use and not such materials as might be imported for resale as a result of a foreclosure against collateral security.

With respect to narcotics and sanitary laws, Section 6 of Article IX must be considered. It provides:

"To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature."

The clear intention of this section which can be ascertained from its language, is that the financial assets of the Fund should always be free for use in the purchase of goods within the country to which they relate. If the Fund holds currency, it should be freely available for the purchase of goods within the country of issue by any other member that requires the currency from the Fund. Similarly, if the Fund has a deposit in a bank it should not be subject to a moratorium. A further example is the use of exchange controls which may be consistent with the Articles of Agreement. Such controls could not be exercised against currency holdings of the Fund. These are the types of restrictions, regulations, controls and moratoria which could interfere with the legitimate operations of the Fund Agreement.

Narcotic laws, sanitary laws, etc., are not, however, an interference with the legitimate operations of the Fund. They are not directed at problems with which the Fund is designed to deal. They are enacted entirely without reference to such matters and for purposes which are entirely a matter of domestic policy, and any effort on the part of the Fund to circumvent them would be a clear violation of its powers.