

COPY

Mr. Luxford

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With reference to the informal opinion which Dick prepared on the construction of Article IV, Section 2 of the Bank Agreement, I believe that further consideration should be given to the problem involved before the opinion is transmitted.

Although the language of Article IV, section 2(a) and (d) literally support Dick's interpretation, there are other factors which may be compelling.

1. Article II, section 7 (i) originally called for 18 per cent in local currency and 2 per cent in gold. Later to satisfy some countries, i.e., Mexico, which preferred not to be "required" to pay in gold, we permitted the alternative of payment in U. S. dollars. When Article IV, section 2 was drawn the distinction between currency and gold was clearly delineated. With respect to currency, i.e., the 18 per cent, the country whose local currency it was retained control. With respect to the gold, i.e., the 2 per cent, there were no restrictions placed on its use. Article IV, section 2(a) and (d) was never changed to take care of the new situation created by the amendment to Article II, section 7(i), permitting payment of the 2 per cent in U. S. dollars as well as gold.

As a result, although any country which possesses dollars could easily convert into gold the fact that a particular country happens to pay its two percent in U. S. dollars rather than in gold becomes the determining factor in increasing U. S. control over the use of the funds.

2. My recollection is that it was the intention and understanding of those who participated in the drafting of the Agreement that only the 18 per cent under Article II, 7 (i) was to be restricted and that the two per cent payable in gold or dollars was to be free.

3. Apart from the intention which admittedly was not reflected in Article IV, (a) and (d) there is a further point of policy involved. Manifestly, if the various members are informed of the interpretation placed upon IV, 2(a) and (d), they could make their contribution in gold and to that extent at least make the problem academic. However, since the United States could pay its two per cent in dollars and,

under Article IV, 2(a) and (d), retain control over the use of such dollars, the United States will be the only member which can restrict the use of its two per cent as well as of its 18 per cent contribution. Such an interpretation might be shocking to the other members.

4. Although it may be better, as a selling point to be able to say that the United States controls every dollar it places in the Bank, I believe that the advantage to be gained is not considerable. I feel that it does not much matter, from the point of view of Congress, whether we say that the United States controls every dollar it puts into the Bank or whether we merely say that the United States controls 9 out of every 10 dollars which it puts in the Bank and the 10th dollar which it does not control is matched by gold or United States dollars put up by the other members, which contribution they also do not control.

Apart from its possible value as a selling point the suggested interpretation of Article IV, section 2 provides negligible benefits to the United States. These benefits are certainly not worth the price of being vulnerable to the charge of bad faith or sharp practice.

In view of the foregoing I suggest that further consideration be given to the problem before interpreting the Bank Agreement in such a way as to give the United States an unintended, one-sided advantage, irrespective of how legally justifiably such an interpretation may be.

N.B. It is interesting to note that on page 2 of the "Annotations" of the "Bretton Woods Bank for Reconstruction and Development", prepared by Mr. Laylin, he treats the two per cent initial subscription whether paid in dollars or gold as "free" stating that that is the only amount available for loans by a majority vote of the directors. Referring to the 18 per cent, he mentions that this portion of the subscription is only available for direct loans if the subscribing member specifically consents to its use for that purpose.