

**Areas of Possible Conflict Between the Articles of
Agreement of the International Monetary
Fund and the Proposed Commercial
Policy Convention**

I. Common Purpose of Two Agreements

The Articles of Agreement of the International Monetary Fund represent a concerted attempt on the part of the United Nations to deal with exchange controls in a manner calculated to secure the increase of trade. The Agreement constitutes, accordingly, a policy convention covering an important segment of commercial practice. It is the purpose of the Fund, as it is part of the purpose of the proposed commercial policy convention, to promote the stability of exchange rates and to remove restrictions and discriminatory practices. Between these two commercial policy conventions there is, accordingly, no conflict of purpose.

II. Relations Between the Fund and the I.T.O.

Inasmuch, however, as two authorities — the Fund management and the International Trade Organization — are concerned with the one broad field of commercial policy, conflicts of a jurisdictional nature may arise between them. An instance of overt conflict is afforded by the procedure which the Articles of Agreement and the proposed convention contemplate in a case in which a member's balance of payments is markedly adverse. A relevant Fund Agreement provision (in Article VIII, Section 2a) is as follows:

"No member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions."

For its part, the commercial policy convention recognizes that the restraints it imposes upon exchange controls (to be discussed hereafter) may have to be relaxed when a nation's balance of payments is adverse, and a "Balance-of-Payments Exception" (Article XXII) provides that:

"1. If any contracting State is confronted with serious balance-of-payments difficulties, it may, after approval by the International Trade Organization and after less drastic measures have proved inadequate, adopt a temporary policy of restricting merchandise imports, taking into account the desirability of causing no unnecessary dislocation to its

foreign trade and of reconciling the effect of reduced imports with the requirements of its domestic economy, by limiting the amount of exchange made available for the importation of specific products or groups of products or by limiting the quantity or value of such products or groups of products permitted to be imported. Such limitations shall be effected only as a part of a program designed primarily to correct the underlying causes of the imbalance which resulted in the invoking of this Article, shall be no more restrictive than necessary to accomplish the purpose for which a curtailment of imports was authorized, and shall be moderated and removed as rapidly as conditions permit. *

"2. The International Trade Organization shall approve the imposition of restrictions authorized by paragraph 1 of this Article, in respect to any contracting state, if the International Monetary Fund, pursuant to Article VIII, Section 2 (a), of the International Monetary Fund Agreement, has determined that such contracting State is confronted with serious balance-of-payments difficulties and has authorized such contracting state to impose restrictions on current exchange transactions." *

Accordingly, a country must, before imposing exchange controls, have the consent of the I.T.O. It must likewise have the permission of the Fund if it is a member of that organization. Even Section 2, quoted above, requires an overt if mandatory approval by the I.T.O. when the Fund has acted under Article VIII, Section 2, of the Articles of Agreement. Accordingly, no nation which adheres to the two conventions can institute controls without the consent of two authorities.

It is to be noted, too, that the commercial policy convention treats exchange control as a transient expedient, to be employed only as "part of a program designed primarily to correct the underlying causes of the imbalance."

If there is any one situation with which the Fund can be said to be especially — and even uniquely — fitted to deal, it is that in which a nation is involved in balance-of-payments difficulties. Apart from whatever specialized capacity for judgment the Fund may possess or acquire in the exercise of its specialized function, it alone has monetary resources which it can make available to the distressed member. Having such resources available to it, the member

* Italics supplied.

need not so soon, or so rigorously if at all, impose upon trade the restrictions contemplated by the "Balance-of-Payments Exception" of the commercial policy convention. In a very real sense the Fund Agreement is less restrictive of trade than the commercial policy convention. The Fund alone can supplement the member's own inadequate resources. By the same token, however, there must be retained to the Fund the power to define the situation in which and upon what conditions a nation can impose restrictions upon the exchanges. Otherwise it may be placed in the impossible position of having to make its resources available at times and under conditions determined by another authority.

III. Treatment of the Transitional Period.

The Fund provisions for a transitional period are contained in Article XIV, where it is provided (Sections 2 and 4) that:

"Sec. 2. Exchange restrictions.—In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary) restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund.

"Sec. 4. Action of the Fund relating to restrictions.—Not later than three years after the date on which the Fund begins operations and in each year thereafter, the Fund shall report on the restrictions still in force under Section 2 of this Article. Five years after the date on which the Fund begins operations, and in each year thereafter, any member still retaining any restrictions inconsistent with Article VIII, sections 2, 3, or 4, shall consult the Fund as to their further retention. The Fund may, if it deems such action necessary in exceptional circumstances, make representations to any member that conditions are favorable

for the withdrawal of any particular restriction, or for the general abandonment of restrictions, inconsistent with the provisions of any other article of this Agreement. The member shall be given a suitable time to reply to such representations. If the Fund finds that the member persists in maintaining restrictions which are inconsistent with the purposes of the Fund, the member shall be subject to Article XV, Section 2(a)."

The draft commercial policy convention provides for a more rigorous handling of the transition. The general exchange undertaking (Article XX) reads as follows:

"1. Except as otherwise provided in this Section, no prohibition, restriction or delay shall be established or maintained by any contracting State on the transfer of payments with respect to commercial transactions with any other contracting State.

"2. The contracting States shall give effect to the provisions of paragraph 1 of this article as soon as practicable, but not later than three years after the International Monetary Fund begins operations. However, no contracting State shall except as provided in Article XXII, impose any prohibition, restriction or delay on the transfer of payments with respect to commercial transactions with other contracting states more burdensome than those in effect on the day of the signature of this Convention. *

"3. No prohibition or restriction shall be imposed by any contracting State on the payment or international transfer of payment in full, and promptly upon becoming due, for or incidental to any merchandise permitted to be imported."

It is provided that this Article, like all others in the proposed convention which deal with exchange control, shall not prevent a member country from exercising controls under Articles VI (Capital Transfers) and VII (Scarce Currencies) of the Fund Agreement. It is, accordingly, to be read in juxtaposition to Article XIV, previously quoted, of the Fund Agreement.

The commercial policy convention would limit the transitional period to three years and would prohibit nations from any action which would increase the restrictiveness of existing controls. This

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Section is, it is true, subject to the "balance-of-payments" exception (Section XXII) previously quoted. The commercial policy convention is, however, stricter than the Articles of Agreement. Its effect would therefore be to pass to the I.T.O. control of exchange practice after three years (and, to the extent that nations should anticipate that I.T.O. would not permit a "balance-of-payments" exception, before then.). I.T.O. would have to act before occupied countries could impose the controls with respect to which they are allowed discretion by Fund Article XIV. In short, the I.T.O. would be in a position to determine exchange policy in the transition period. The Fund would, in short, be deprived of the administrative discretion which the delegates at Bretton Woods thought necessary for the exercise of its functions.

IV. Discriminatory Currency Arrangements and Multiple Currency Practices.

The draft convention places discriminatory currency arrangements and multiple currency practices under an interdict subject only to the scarce currency provisions of the Fund Agreement. The relevant section reads as follows:

"If the Government of any Contracting State establishes or maintains any form of control of the means of international payment, it shall accord unconditional most-favored-nation treatment to the commerce of the other Contracting States with respect to all aspects of such control. This provision shall be construed to prohibit any Contracting State from establishing or maintaining exchange clearing or other arrangements which have the effect of discriminating against any Contracting State, from imposing obstacles to the multilateral settlement of commercial transactions, and from engaging in any form of discriminatory currency arrangements or multiple currency practices." *

This provision illustrates a fundamental difference between the Articles of Agreement and the proposed commercial policy convention; the former, far more than the latter, allows for administrative discretion. The difference is not confined to this one matter, but is, in essence, the basis of the conflicts previously noted as well.

The necessity for the retention of administrative judgment can be illustrated by a consideration of the transitional-period provisions of the two conventions. It must be recognized that the nations

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for whose special benefit Fund Article XIV was drawn are faced, even under the most favorable of circumstances, with exceedingly difficult problems. It is now impossible even to foresee what will prevail in the post-war period. The choices are altogether likely to be choices between evils and not between good and evil. When accordingly, the commercial policy convention undertakes to define more narrowly than does the Fund Agreement the period and circumstances in which nations may exercise admittedly undesirable practices, it is depriving the nations of the world and the Fund authorities of some of the freedom of action which in the minds of the monetary experts at Bretton Woods will probably prove to be necessary. It is not the purpose of the Fund Agreement to promote or encourage commercial practices judged to be undesirable by the authors of the commercial policy convention. Rather, it is thought hazardous to engage now in the exact prediction of future events implied in the definition of precise periods or practices. If a five-year transition period is contemplated in the Fund Agreement it is because the delegations represented at Bretton Woods were convinced that the arbitrary definition of a shorter one would be hazardous to their undertaking. They were, it is to be recalled, agreed upon the purposes of that undertaking. They were likewise agreed upon the proposition that having an international authority they should impose confidence in it.

V. Significance of I.T.O. Actions for the Fund.

The potential conflicts of jurisdiction previously discussed arise as a consequence of the fact that it is proposed to empower two different authorities to deal with a single and specific set of problems, *viz.*, exchange rates and practices. There is, however, a wide range of potential conflict which issues from the circumstance that the same two authorities are concerned with the broad field of commercial policy. If, for example, actions in the field of exchange rates and practices are of concern to the I.T.O., those related peculiarly to trade are of no less concern to the Fund. Tariff schedules, quotas, export subsidies and the like are significant determinants in the balance of payments of any nation and are, accordingly, of concern to the International Monetary Fund.

VI. Suggested Resolution of the Potential Areas of Conflict.

It is to be recognized, first of all, that the International Monetary Fund and the proposed International Trade Organization will operate in a field which is essentially indivisible. It is accordingly impossible to resolve beforehand all of the potential conflicts between them. It is also to be recognized, however, that each has an area of primary concern within that field. The Fund is peculiarly

equipped to deal with balance-of-payments and exchange problems. The I.T.O. is, upon the other hand, primarily interested in the conditions prevailing in the international commodity trade. Its attack upon exchange controls, for example, is based in the circumstance that such controls can and have been employed to restrict the free flow of commodity trade.

It is, first of all, necessary to recognize that the two authorities have these different areas of primary interest. In particular, it is necessary to recognize that the International Monetary Fund is the responsible authority in the field of exchange rates and practices and that for the proper exercise of that authority the Fund must have retained to it the administrative discretion with which it is endowed in the Articles of Agreement. This does not imply that an exclusive sphere of interest is to be delineated for either the Fund or the I.T.O. The purposes of both organizations will be endangered if not defeated if either should adopt a policy of jealously excluding the other from its counsels. It was in anticipation of the necessity for collaboration that Article I was included in the Fund Agreement:

"The Fund shall cooperate within the terms of this Agreement with any general international organization and with public international organizations having specialized responsibilities in related fields. Any arrangements for such cooperation which would involve a modification of any provision of this Agreement may be effected only after amendment to this Agreement under Article XVII."

It is here proposed that each organization recognize and respect the primary interests and responsibilities of the other but that each regularly consult with and inform the other of developments and proposed actions. Not only will such consultation assure that the two will not proceed at cross purposes but it will result, as experience is accumulated, in a more precise definition of areas of primary interest than is now possible.