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The question has been raised as to whether there is legal authority for the United States to fulfill its quota entitling it to participation in the International Stabilization Fund by transferring to it all or part of the inactive \$1,800,000,000 of gold presently held in the United States Stabilization Fund.

In order to set the problem in its proper perspective, it might be well to describe the general character and purpose of the International Stabilization Fund and to set forth at length the appropriate provisions of the United States statute which deals with the manner in which, and the purposes for which, the U. S. Fund may be used.

The International Stabilization Fund has been proposed as an agency whose function will be to deal with international economic and monetary problems with a view toward achieving monetary stability and facilitating the balanced growth of international trade. This Fund will be created by a group of member countries who will participate in the Fund by making payments of gold, currency and Government obligations. The expressed objective of the Fund and its principal *raison d'être* will be to stabilize the values of the currencies of member countries with respect to each other. The guiding principle in the fixing of the rates at which the Fund will buy and sell the currency of one member for that of another will be stability in exchange relationships.

Section 10 of the Gold Reserve Act of 1934 provides in part:

"(a) For the purpose of stabilizing the exchange value of the dollar, the Secretary of the Treasury, with the approval of the President, directly or through such agencies as he may designate, is authorized, for the account of the fund established in this section, to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of this section. An annual audit of such funds shall be made and a report thereof submitted to the President.

"(b) To enable the Secretary of the Treasury to carry out the provisions of this section there is hereby appropriated, out of the receipts which are directed to be covered into the Treasury under section 7 hereof, the sum of \$2,000,000,000, which sum when available shall be deposited with the Treasurer of the United States in a stabilization fund (hereinafter called the "fund") under the exclusive control of the Secretary of the

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Treasury, with the approval of the President, whose decisions shall be final and not be subject to review by any other officer of the United States. The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with carrying out the provisions of this section, including the investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for stabilizing the exchange value of the dollar. The proceeds of all sales and investments and all earnings and interest accruing under the operations of this section shall be paid into the fund and shall be available for the purposes of the fund."

At the outset it will be observed that the objective sought to be attained by each of the Stabilization Funds is practically identical. The International Stabilization Fund deals with this objective on a broad and inclusive basis, whereas, the United States Stabilization Fund has been operating in the same field on a less comprehensive scale. There are a number of provisions in the above-quoted statute which clearly indicate that the proposed action is authorized.

(1) Section 10(a) grants the Secretary of the Treasury extremely broad powers to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purposes of this section. The purchasing of a membership interest in the International Stabilization Fund which carries with it the right to vote in the management of the Fund, to receive dividends out of the profits of the Fund, and to withdraw from such membership upon proper notice, seems to fall clearly within the purview of the language permitting the Secretary "to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purposes of this section".

Although the preliminary draft of the proposed International Stabilization Fund does not seem to be articulate with respect to what evidence of their respective interests is intended to be furnished to the members of the Fund, it may be fairly assumed that some form of certificate of membership will be issued stating the nature and extent of the participation of the particular member, and that such certificate will constitute a security within the meaning of section 10(a).

(2) Apart from the foregoing, there is other language in section 10(a) which is susceptible of being interpreted to include within the contemplation of that section the designation of the International

Stabilization Fund by the Secretary of the Treasury as the agency to deal in gold and foreign exchange and such other instruments of credit and securities as he may deem necessary to carry out the purpose of the section. The Secretary is authorized to conduct these operations "directly or through such agencies as he may designate". It seems clear that the proposed Fund will be an agency which may be utilized for such purposes. Once the assets have been transferred, the Secretary will not have complete control over the uses to which they are put by the International Stabilization Fund, but only such control as is obtained by reason of a proportionate participation in the Fund and by reason of the provisions contained in its by-laws. Accordingly, there may be some doubt whether the Fund would, under those circumstances, constitute an "agency" within the meaning of section 10(a).

(3) The plenary powers over the Fund given to the Secretary of the Treasury for the purpose of carrying out the provisions of this section seem fully adequate to enable him to transfer, with the approval of the President, all or any portion of it to the proposed International Stabilization Fund. The only limitation present seems to be a restriction as to purpose rather than method of use. Given the fact that the expenditure is for the purpose of stabilizing the exchange value of the dollar, the choice of a particular vehicle to be utilized by the Secretary of the Treasury would appear to be within his discretion.

The language of section 10(b) clearly and unambiguously places within the discretion of the Secretary of the Treasury the expenditure of the Fund for the designated purposes. Accordingly, the Secretary can dispose of the assets held in the Stabilization Fund so long as he does so for the purpose of stabilizing the exchange value of the dollar. That the transfer of such assets to the International Stabilization Fund is a disposition of them for this purpose is too clear to justify extended discussion. Since the assets could be irretrievably disposed of for this purpose, they can, of course, be made available upon terms looking toward their eventual return.

There is nothing in the foregoing which extends by interpretation the powers that Congress intended should be vested in the Secretary of the Treasury with respect to his operation of the Stabilization Fund. Statements made in the course of the debates concerning the Secretary's authority in administering the stabilization fund reveal that the Congress was fully aware of the almost limitless discretion conferred upon the Secretary with respect to the operation of the fund.

For example, when the original act was under discussion, Representative Williams said, (1934) 78 Cong. Rec. 1016:

"The administration of this fund is placed in the hands of the Treasury Department. The manner in which the fund will be used is entirely in the discretion of the Secretary of the Treasury, and the policy necessarily cannot be announced to the world. It is the intention that the fund shall be so used as to stabilize the American dollar in international exchange and protect our commerce from the assaults of like funds in the hands of other nations."

In 1937 a bill to extend the period of operation of section 10 was under consideration and Representative Hancock made the following observation, (1937) 81 Cong. Rec. 302:

"There is not much dispute among the committee members as to the desirability of a stabilization fund. There is, however, a very serious disagreement as to the manner of its administration. Those of you who were here 3 years ago will recall that there was very strong opposition to giving one man the vast power this act gives the Secretary of the Treasury by putting \$2,000,000,000 entirely within his control, * * *."

When in 1939, the question of understanding this section was again before the Congress, Senator Thomas of Oklahoma remarked, (1939) 84 Cong. Rec. 7208:

"The third provision in the bill relates to the stabilization fund. Congress heretofore took \$2,000,000,000 of the \$2,800,000,000 profit made from the former devaluation and created it into a stabilization fund, and placed that fund in the hands of the Secretary of the Treasury for him to use as he sees proper in stabilizing the American dollar in terms of gold."

It is submitted in view of the foregoing that there is legal authority for the United States to fulfill its quota entitling it to participation in the International Stabilization Fund by transferring to it all or part of the inactive \$1,800,000,000 of gold presently held in the United States Stabilization Fund.