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ATTENTION**

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EBD/84/15

January 19, 1984

To: Members of the Executive Board

From: The Secretary

Subject: Colombia - Inquiry Under Article VIII, Section 2(b)

It is not proposed to bring the attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by noon on Wednesday, January 25, 1984. In the absence of such a request, the draft decision will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Att: (1)

Other Distribution:
Department Heads



INTERNATIONAL MONETARY FUND

COLOMBIA

Inquiry Under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade
Relations and the Western Hemisphere Departments)

Approved by George P. Nicoletopoulos

January 19, 1984

A law firm has inquired of the Fund, in connection with an appeal before a U.S. Court of Appeals for the Second Circuit relating to the removal of foreign currency from the territory of a Fund member, the Republic of Colombia, whether certain legal provisions of Colombia are maintained consistently with the Fund's Articles of Agreement.

The letter of the law firm in which this inquiry is made is annexed hereto as Attachment A.

This inquiry is made under Article VIII, Section 2(b) of the Fund's Articles of Agreement, the first sentence of which reads as follows:

"Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member."

Pursuant to this provision, the Executive Board adopted Decision No. 446-4, on June 10, 1949, in which it is stated that:

"The Fund will be pleased to lend its assistance in connection with any problem which may arise in relation to the foregoing interpretation or any other aspect of Article VIII, Section 2(b). In addition, the Fund is prepared to advise whether particular exchange control regulations are maintained or imposed consistently with the Fund Agreement." (Selected Decisions, Tenth Issue, pp. 233-234)

The legal provisions that are the subject of this inquiry are the cited provisions of Decree-Law No. 444 of 1967 of Colombia that establish and specify the obligation to surrender all foreign exchange to Colombia's Central Bank.

These provisions are exchange control provisions and "exchange control regulations" for the purpose of Article VIII, Section 2(b).

In contrast to provisions that restrict the making of payments and transfers for current international transactions under Article VIII, Section 2(a) of the Fund Agreement, a provision requiring the surrender of foreign exchange may be maintained without approval of the Fund.

Therefore, the imposition or the maintenance of provisions, to the extent they only require the surrender of foreign exchange, is consistent with the Fund Agreement.

In view of the facts and conclusions set out above, the following decision is proposed for adoption by the Executive Board:

The Director of the Legal Department is authorized to transmit the letter contained as Attachment B to EBD/84/15.

Attachments (2)

COUDERT BROTHERS
Attorneys and Counsellors at Law
200 Park Avenue
New York, N.Y. 10166

January 9, 1984

EXPRESS MAIL

The Secretary
International Monetary Fund
700 19th Street, N.W.
Washington, D.C. 20431

Re: United States of America v. U.S.
currency et al., U.S. Court of
Appeals, Second Circuit No. 83-6266

Dear Sir:

In connection with the above appeal, which concerns the removal of U.S. \$250,000 in bank notes from the territory of our client Republic of Colombia without its permission, we would like to request the assistance of the International Monetary Fund with regard to the clarification of whether certain requirements of Colombian law are maintained or imposed consistently with the Articles of Agreement of the International Monetary Fund under Article VIII Section 2(b) of this Agreement.

Articles 4, 30, 31, 150 and 217-225 of Colombian Decree Law No. 444 of 1967 establish and specify the obligation to surrender foreign exchange to the Central Bank of Colombia.

Therefore, we wish to request the Fund to indicate whether a Colombian legal provision, to the extent it is applied to require that all foreign exchange be surrendered to the Central Bank, is imposed or maintained consistently with the Articles of Agreement of the Fund.

Yours sincerely,

(Signed) John Carey

Proposed Reply

Dear Mr. Carey:

This letter is in reply to your letter of January 9, 1984 inquiring whether specified provisions of Colombian law are imposed or maintained consistently with the Articles of Agreement of the Fund.

I hereby confirm that the Colombian legal provisions referred to in your letter, to the extent they are applied to require the surrender of foreign exchange to Colombia's Central Bank, are imposed and maintained consistently with the Articles of Agreement of the Fund.

Very truly yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. John Carey
Coudert Brothers
200 Park Avenue
New York, N.Y. 10166