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EBD/83/119

April 27, 1983

To: Members of the Executive Board

From: The Secretary

Subject: Mexico - 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 Monday, May 2, 1983. In the absence of such a request, the proposed 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

Mexico: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

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

Approved by George P. Nicoletopoulos

April 26, 1983

A law firm has inquired whether certain measures adopted by Mexico in August and September, and still in effect, are maintained consistently with the Fund's Articles of Agreement. These measures require that obligations pursuant to deposits in Mexican banks denominated in foreign currency be discharged only by the payment of Mexican pesos. At issue in the legal action are certificates of deposit issued by Mexican banks denominated in U.S. dollars which were to be paid in Mexico. Under the measures in question these certificates of deposit, as well as other deposits denominated in U.S. dollars, are to be discharged by the payment of Mexican pesos. Two letters from the law firm are annexed hereto as Attachments A and B. The second letter directs the question specifically to the provisions of the "Rules" enacted on August 13, 1982 and the "Decree" enacted on September 1, 1982.

The inquiry is made under Article VIII, Section 2(b) of the Fund's Articles of Agreement, which reads, in part, 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.

Decision No. 446-4 of June 10, 1949, by which the Executive Board interpreted the provision quoted above, contains the following statement:

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.

From August 13 until December 13, 1982 the Mexican authorities enacted a series of measures which regulated the discharge in Mexico

of obligations in foreign currency. The particular provisions of these measures referred to in the letter from the law firm provided that deposits held in Mexican banks that are denominated in foreign currency must be settled by the payment of an equivalent amount in Mexican pesos at a specified rate of exchange.

The staff has discussed these measures with the Mexican officials who stated that since the enactment of Mexico's monetary law of July 27, 1931, obligations for the payment of foreign currency to be performed within Mexico were to be discharged by the delivery of the equivalent amount of Mexican pesos at the rate in effect at the place and on the date on which payment is to be made. Prior to August 13, 1982, however, Mexico maintained an unrestricted exchange system, in which there was no limitation on the buying and selling of foreign exchange, and a bank deposit denominated in U.S. dollars could, at the request of the depositor, be repaid either in U.S. dollars or in Mexican pesos. The possibility to pay in dollars was terminated when, in light of the developments in Mexico's balance of payments and reserve position, the Mexican authorities adopted the measures referred to above, which required that (i) all foreign currency deposits maintained in Mexican banks be discharged by the payment of Mexican pesos only, and that (ii) all such deposits be converted automatically into Mexican pesos when they reach maturity at the exchange rate fixed by the Bank of Mexico.

These measures, which affect deposits in Mexican banks denominated in foreign currency, including such deposits by nonresidents of Mexico, are exchange control measures and can be considered to be "exchange control regulations" for the purposes of Article VIII, Section 2(b). The maintenance of these measures does not violate nor is it inconsistent with any of the provisions of the Fund's Articles because they do not, in themselves, constitute restrictions on the making of payments and transfers for current international transactions within the meaning of Article VIII, Section 2(a). Other provisions in the exchange control system introduced by Mexico under the measures adopted since August 1982 prescribe how payments and transfers for international transactions are to be made. The exchange system was described in Appendix V of EBS/82/208, Supplement 1 and in EBS/82/208, Supplement 3, and was considered by the Executive Board in meetings 82/167 and 82/168 on December 23, 1982.

In view of the interest of the Fund in maintaining the effectiveness of Article VIII, Section 2(b), it is recommended that the Fund's response to the inquiry of the law firm be in accordance with Attachment C. Accordingly, the following draft decision is proposed for adoption by the Executive Board:

"The Director of the Legal Department is authorized to

transmit the letter contained as Attachment C to EBD/83/119."

Attachments (3)

CURTIS, MALLET-PREVOST, COLT & MOSLE  
Attorneys and Counsellors at Law  
1735 I Street N.W.  
Washington, D.C. 20006

December 28, 1982

George P. Nicoletopoulos, Esquire  
Director of the Legal Department  
International Monetary Fund  
700 19th Street N.W. Suite 8-320  
Washington, D.C. 20431

Dear Mr. Nicoletopoulos:

We are counsel to Bancomer, S.A. ("Bancomer") a Mexican bank presently nationalized and owned and controlled by the Government of the United Mexican States. Bancomer is currently being sued in the United States District Court for the Northern District of Texas by persons who claim to be holders of U.S. Dollar denominated certificates of deposit issued by the Nuevo Laredo, Mexico branch of Bancomer. The suit is based on the inability of Bancomer to pay on such certificates in U.S. Dollars as a result of certain Mexican governmental decrees and regulations which are described below:

On August 13, 1982 the Government of Mexico enacted the "Rules for the Payment of Bank Deposits Denominated in Foreign Currency" (Reglas para el pago de depositos bancarios denominados en moneda extranjera) (the "Rules") which provided that all foreign currency deposits maintained in Mexican banks shall be paid in Mexican Pesos at the time of payment and at a rate of exchange in effect at the place and date of payment.

On September 1, 1982, the "Decree Establishing General Exchange Controls" (Decreto que establece el control generalizado de cambios) was enacted, which among other things provided that all foreign currency deposits held in Mexican banks referred to in the Rules were to be converted automatically into Mexican Pesos when they reach maturity at the exchange rate fixed by the Banco de Mexico.

On September 14, 1982 the "General Rules for Exchange Controls" (Reglas generales para el control de cambio) were enacted, which established an ordinary rate of 70 Mexican Pesos for a U.S. Dollar and a preferential rate of 50 Mexican Pesos for a U.S. Dollar, and provided further that deposits referred to above denominated in a

foreign currency would be payable in Pesos at the ordinary rate upon maturity.

On December 13, 1982 the "Decree Concerning Exchange Controls" (Decreto de control de cambios) was enacted to become effective on December 20, 1982 and is currently in effect. In relevant part, this Decree provided for a special rate of exchange to be fixed by the Bank of Mexico to be used in respect of payments to be made in Mexico of obligations denominated in foreign currencies contracted before the effective date of the Decree. Such special rate is to be used for the conversion at maturity into Pesos of the U.S. Dollar denominated deposits referred to in the Rules. The special rate established by the Banco de Mexico for the month of December ranged from 70 to 71.54 Mexican Pesos to the U.S. Dollar.

The plaintiffs in the pending action have asserted that the provisions of such decrees and regulations, initiated in August and presently in effect, which require the payment of U.S. Dollar amounts due under certificates of deposit in Mexican Pesos, violate the Articles of Agreement of the International Monetary Fund, as amended. It is our understanding, however, that such provisions relating to payment in Mexican Pesos are consistent with the Articles of Agreement, as substantiated by the actions taken by the Fund in connection with its agreement to the use of its resources by the Government of Mexico.

Would you please confirm our understanding.

Sincerely yours,

(Signed) Ruth T. Prokop

CURTIS, MALLET-PREVOST, COLT & MOSLE  
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1735 I Street N.W.  
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January 18, 1983

Mr. James Evans  
Deputy General Counsel  
International Monetary Fund  
1700 19th Street, N.W.  
Suite 8320  
Washington, D.C.

Dear Mr. Evans:

I would like to express once again my appreciation for the time you took on Monday to meet with me.

As you know, because of the short time period available to us, we are most anxious that the Fund issue a letter to us as soon as possible confirming that those particular provisions of Mexico's Currency Regulations (enacted in August and continuing in effect today) which require repayment of deposits in Mexican banks to be made in Mexican pesos regardless of the currency in which the deposits are denominated, do not violate and are not inconsistent with the Articles of Agreement of the International Monetary Fund.

Sincerely yours,

(Signed) Preston Brown

Dear Mr. Brown:

This letter is in reply to the inquiry from your law firm as to whether certain measures taken by Mexico, in particular the "provisions of Mexico's Currency Regulations (enacted in August and continuing in effect today) which require repayment of deposits in Mexican banks to be made in Mexican pesos regardless of the currency in which the deposits are denominated", violate or are inconsistent with the Articles of Agreement of the International Monetary Fund. I can state that the measures in question do not violate and are not inconsistent with the Articles of Agreement of the International Monetary Fund.

Sincerely,

George P. Nicoletopoulos  
Director, Legal Department

Mr. Preston Brown  
Curtis, Mallet-Prevost, Colt & Mosle  
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