

DOCUMENT OF INTERNATIONAL MONETARY FUND
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**FOR
AGENDA**

EBS/86/21

CONFIDENTIAL

January 29, 1986

To: Members of the Executive Board

From: The Secretary

Subject: Notification by the United States of Restrictions Imposed for
Security Reasons Under Executive Board Decision No. 144 and
Complaint by the Socialist People's Libyan Arab Jamahiriya
Under Rule H-2

Attached for consideration by the Executive Board is a staff paper relating to the notification by the United States of restrictions under Executive Board Decision No. 144 and the complaint by the Socialist People's Libyan Arab Jamahiriya under Rule H-2.

As agreed, this matter will be brought to the agenda for discussion on Friday, January 31, 1986.

Att: (1)

INTERNATIONAL MONETARY FUND

Notification by the United States of Restrictions Imposed
for Security Reasons under Executive Board Decision No. 144
and Complaint by the Socialist People's Libyan Arab Jamahiriya
under Rule H-2

Prepared by the Legal Department

(In consultation with other Departments)

Approved by Francois Gianviti

January 29, 1986

1. On January 16, 1986 members of the Executive Board were notified of a communication received from the Executive Director for the United States with respect to the imposition of restrictions under Executive Board Decision No. 144-(52/51), August 14, 1952 (Attachment I). The communication specifically referred to the U.S. Libyan Sanctions Regulations of January 10, 1986, implementing Executive Order No. 12543 of January 7, 1986, and the Libyan Sanctions Regulations of January 15, 1986, implementing Executive Order No. 12544 of January 8, 1986; copies of the Executive Orders and the Regulations were attached.

Subsequently, the Fund received two communications from the Governor for the Socialist People's Libyan Arab Jamahiriya which were circulated to the Executive Board (EBS/86/8, 1/15/86 and EBS/86/8, Sup. 1, 1/22/86). The first of these two communications stated that the U.S. Executive Order of January 8 was contrary to the Articles of Agreement, and was transmitted to the Managing Director "for any appropriate action". The second communication also asserted that the Executive Order of January 7 contained elements inconsistent with the Fund's Articles of Agreement, and requested that the Socialist People's Libyan Arab Jamahiriya's complaint against the U.S. actions which were referred to in both communications "be brought before the Fund's Executive Board for discussion as soon as possible".

2. The second communication from the Socialist People's Libyan Arab Jamahiriya constitutes a complaint under Rule H-2, in that a member requests that the Board discuss the member's assertions that another member is not complying with its obligations relating to exchange measures under the Articles of Agreement. Rule H-3 therefore is applicable. Rule H-3 states:

"Upon receipt of a complaint from a member, the Executive Board shall make arrangements promptly for consultation with the members directly involved."

The Executive Board, at its meeting on Friday, January 24, 1986, pursuant to Rule H-3, and on the proposal of the Managing Director, decided that he should consult with the Executive Directors for the United States and the Socialist People's Libyan Arab Jamihiriya on the matters raised in the communications from the United States and the Socialist People's Libyan Arab Jamihiriya, and that he would inform the Executive Board about the outcome of those consultations on Friday, January 31, 1986, when the complaint by the Socialist People's Libyan Arab Jamihiriya will be on the agenda of the Executive Board.

3. As noted above, the United States authorities have availed themselves of the provisions of Executive Board Decision No. 144. Under the terms of that decision, exchange restrictions that are subject to the approval of the Fund and that, in the judgment of the member, are solely related to the preservation of national or international security, are to be notified to the Fund, preferably in advance, or at least promptly but ordinarily not later than 30 days after imposing such restrictions.

Executive Board Decision No. 144 also provides that:

"Unless the Fund informs the member within 30 days after receiving notice from the member that it is not satisfied that such restrictions are proposed solely to preserve such security, the member may assume that the Fund has no objection to the imposition of the restrictions."

In accordance with this provision, the relevant 30-day period begins on the day after receiving the U.S. notification, that is, starts on January 17, 1986, so that the 30-day period expires at midnight, February 15, 1986.

4. Two additional procedural matters under Executive Board Decision No. 144 and Rule H-3 might be noted.

First, the U.S. measures that would require the approval of the Fund under the Articles of Agreement will be considered to be consistent with the Articles unless the Fund takes a decision that it is not satisfied that the restrictions were imposed solely to preserve national or international security, and so informs the member. Such a decision of the Executive Board would be taken by a majority of the votes cast. In calculating the votes cast, abstentions would not be counted.

Secondly, the consultation process envisaged under Rule H-3 is not coterminous in time with the period under Executive Board Decision No. 144. This means that consultations under Rule H-3 do not interrupt the running of the 30-day period under Executive Board Decision No. 144, and that the consultations could continue beyond 30 days.

5. A list of the instances in which members have availed themselves of the provisions of Executive Board Decision No. 144 is attached (Attachment II).

Payments Restrictions

PAYMENTS RESTRICTIONS FOR SECURITY REASONS: FUND JURISDICTION

Art. VIII, Sec. 2(a), in conformity with its language, applies to all restrictions on current payments and transfers, irrespective of their motivation and the circumstances in which they are imposed. Sometimes members impose such restrictions solely for the preservation of national or international security. The Fund does not, however, provide a suitable forum for discussion of the political and military considerations leading to actions of this kind. In view of the fact that it is not possible to draw a precise line between cases involving only considerations of this nature and cases involving, in whole or in part, economic motivations and effects for which the Fund does provide the appropriate forum for discussion, and the further fact that the Fund must exercise the jurisdiction conferred by the Fund Agreement in order to perform its duties and protect the legitimate interests of its members, the following policy decision is taken:

1. A member intending to impose restrictions on payments and transfers for current international transactions that are not authorized by Art. VII, Sec. 3(b) or Art. XIV, Sec. 2 of the Fund Agreement and that, in the judgment of the member, are solely related to the preservation of national or international security, should, whenever possible, notify the Fund before imposing such restrictions. Any member may obtain a decision of the Fund prior to the imposition of such restrictions by so indicating in its notice, and the Fund will act promptly on its request. If any member intending to impose such restrictions finds that circumstances preclude advance notice to the Fund, it should notify the Fund as promptly as circumstances permit, but ordinarily not later than 30 days after imposing such restrictions. Each notice received in accordance with this decision will be circulated immediately to the Executive Directors. Unless the Fund informs the member within 30 days after receiving notice from the member that it is not satisfied that such restrictions are proposed solely to preserve such security, the member may assume that the Fund has no objection to the imposition of the restrictions.

2. The Fund will review the operation of this decision periodically and reserves the right to modify or revoke, at any time, the decision or the effect of the decision on any restrictions that may have been imposed pursuant to it.

Decision No. 144-(52/51)

August 14, 1952

Notification Under Decision No. 144-(52/51),
adopted August 14, 1952
(as of January 28, 1986)

<u>Member imposing restrictions</u>	<u>Member(s) directly affected</u>	<u>Date of notification to the Board</u>
United States	China	December 16, 1950 <u>1/</u>
Cuba	China	July 10, 1951 <u>1/</u>
United States	China and Czechoslovakia	July 28, 1953
Guatemala	Unspecified	July 26, 1954
United States	Laos, Viet Nam <u>2/</u>	October 28, 1954
United States	Cuba	July 10, 1963
Malaysia	Indonesia	February 17, 1964
India	Pakistan	December 8, 1965
United Kingdom	Rhodesia	December 16, 1965
Ireland	Rhodesia	January 12, 1966
Jamaica	Rhodesia	January 11, 1966
India	Rhodesia	January 12, 1966
New Zealand	Rhodesia	February 1, 1966
Australia	Rhodesia	February 25, 1966
Cyprus	Rhodesia	April 6, 1966
Sierra Leona	Rhodesia	April 26, 1966
Uganda	Rhodesia	April 26, 1966
Nigeria	Rhodesia	April 26, 1966
Tanzania	Rhodesia	April 28, 1966

1/ Decision No. 144-(52/51) was declared applicable to these measures retroactively (see Decision No. 145).

2/ The United States notified the Fund on May 7, 1964 of restrictions on payments to North Viet Nam.

Sudan	Rhodesia	May 2, 1966
Tunisia	Rhodesia	May 4, 1966
Trinidad & Tobago	Rhodesia	May 17, 1966
Kuwait	Rhodesia	May 19, 1966
Kenya	Rhodesia	May 23, 1966
Ceylon (Sri Lanka)	Rhodesia	May 31, 1966
Senegal	Rhodesia	August 2, 1966
Congo, Dem. Rep.	Rhodesia	September 12, 1966
Mauritania	Israel, Portugal South Africa	July 9, 1968
Singapore	Rhodesia	November 14, 1968
Malaysia	Rhodesia	November 18, 1968
Japan	Rhodesia	January 8, 1969
Malaysia	South Africa	August 8, 1973
United States	Cambodia	July 21, 1975
United States	Viet Nam	July 21, 1975
Egypt	Members applying economic sanctions against Egypt	October 10, 1979
Solomon Islands	Rhodesia	August 3, 1979
United States	Iran	November 29, 1979
United States (Amendment of restrictions)	Iran	April 28, 1980
United Kingdom	Argentine Republic	April 5, 1982
Argentine Republic	United Kingdom	April 6, 1982
United States	South Africa	December 16, 1985
United States	Libya	January 16, 1986