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ATTENTION**

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ROOM C-130

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EBD/86/290

November 4, 1986

To: Members of the Executive Board

From: The Secretary

Subject: Greece - 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, November 10, 1986. In the absence of such a request, the draft decision that appears on page 2 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

GREECE

Inquiry Under Article VIII, Section 2(b)

Prepared by the Legal Department

Approved by François Gianviti

November 3, 1986

The Fund has received an inquiry from a German law firm, in connection with an action pending before a German court, concerning the consistency with the Fund Agreement of certain provisions of the Greek Special Regulations on Exportation and Importation of Merchandise, No. E4/678, of November 3, 1982.

Attachments A and B contain the letter of the law firm and a translation of the Special Regulations of November 3, 1982 referred to above.

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, Twelfth Issue, pp. 273-74)

The provisions that are the subject of this inquiry are those which, in Section 2 of the Special Regulations on Exportation and Importation of Merchandise, No. E4/678, of November 3, 1982, require that the payment of invoices for exports be surrendered within three months of its shipment from Greece; in case of exports with longer than a three-month settlement period or in case of difficulties in surrendering payment within the prescribed time, special approval is required in each case from the

Exchange Subcommittee on Imports/Exports, established in the Bank of Greece.

The requirement, under this provision, to surrender foreign exchange to the Bank of Greece does not constitute a restriction on the making of payments and transfers for current international transactions, and is consistent with the Articles of Agreement of the Fund.

Accordingly, it is recommended that the Fund's response to the inquiry of the law firm be in accordance with Attachment C, and 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 in Attachment C to EBD/86/290.

Attachments: (3)

Rechtsanwälte

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International Monetary Fund
Legal Department
Washington, D.C. 20431
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10.10.1986 De/Co

Re: Greek foreign exchange regulations; Article VIII
section 2(b) of the Bretton Woods convention

Dear Sirs:

On November 3, 1982, the Greek Secretary of Finance and the Greek Secretary of Commerce have enacted foreign exchange regulations to ensure that foreign exchange owed to exporters of Greek goods by foreign importers will actually be transferred to Greece and converted to Greek Drachmas. For this purpose, the Greek government is deemed to be the creditor of all claims for payment arising out of the respective export sales contracts on the basis of an implied assignment stipulated in the regulations mentioned above.

In a lawsuit pending before a German court, a Greek exporter has allegedly assigned his claims for payment arising out of an export sales contract to a German company, evidently to avoid the Greek foreign exchange regulations.

Our opinion is that claims established on the basis of this transfer are not enforceable in Germany according to Article VIII, Section 2(b) of the Bretton Woods convention, of which both Germany and Greece are members.

According to Article VIII, exchange contracts which are contrary to the exchange control regulations enacted by a member state in accordance with the Bretton Woods convention shall not be enforced in the territories of any member. Consequently, the problem arises whether or not the Greek foreign exchange control regulations mentioned above are in conformity with the Bretton Woods convention, i.e. whether or not the International Monetary Fund has explicitly or implicitly given its consent to these regulations.

We kindly ask you for an official statement of the International Monetary Fund on this legal question (conformity of the Greek foreign exchange regulations of November 3, 1982 with the Bretton Woods convention).

Thanking you very much for your time and effort, we remain

Yours very truly,

/s/

Rechtsanwalt

LEG-8606611
Translation

NEWSPAPER OF THE GOVERNMENT OF THE GREEK REPUBLIC
(Section Two)

MINISTERIAL RESOLUTIONS & APPROVALS

No. E4/678

Special regulations on exportation and importation of merchandise.

THE MINISTERS OF NATIONAL ECONOMY AND COMMERCE

Having considered:

1. The provisions of Law No. 936/79 amending and supplementing the provisions concerning commerce abroad.
2. The provisions of Law No. 1266/1982 concerning agents implementing monetary, credit, and exchange policy and other provisions; we resolve:

a) We amend the fourth paragraph of the fourth section of E4/10110/F40/4,1280 of our resolution, to state that the payment of invoices for exports of local and foreign merchandise must be surrendered within three months of its shipment from Greece. In case of exports with longer than a three-month settlement deadline or in case of difficulties in surrendering payment within the prescribed time, special approval shall be required in each case from the Exchange Subcommittee on Imports/Exports, which has its offices at the Bank of Greece and is authorized to set terms and tax collection obligations and to require that the buyer pay compound interest.

b) Effective with the present resolution, exchange settlement on exports shipped less than six months ago must be effected within three months. In the event that, in accordance with the rules of the above-mentioned Exchange Subcommittee, a written agreement allows for a lengthier deadline, the exchange proceeds of the invoice payment must be surrendered within six months of the shipment.

c) We order that currency entering the country in payment for local or foreign merchandise exported from the country must be immediately surrendered by conversion into drachmas; no delays shall be permitted. The intermediary banks, should the payee not appear promptly, shall immediately change the currency into convertible drachmas and transfer the proceeds to a temporary or other relevant account.

d) Supplementing section 1 (Chap. A: V) of the joint resolution of the Ministers of Economy and Commerce, we order that, with respect to payment for imported goods purchased on credit, the intermediary banks shall not advance any money to the importers at the time of the request for credit, nor shall they fix exchange rates at that time. Money shall be advanced and the exchange rate shall be determined four days after the credit is granted. For the keeping of the importers' contractual obligations, the intermediary banks shall take such necessary precautions as they see fit.

e) We entrust the Bank of Greece with the issuance of pertinent guidelines and with the monitoring of the above orders. Any violation discovered must be brought to the attention of the authorities of the appropriate ministries.

The present Regulations, which will become effective on November 3, 1982, shall be published in the Government newspaper.

Athens, November 2, 1982

The Ministers of

National Economy and Commerce

Gerasimos Arsenis Georgios Moraitis

Proposed Reply

Sir:

In response to your letter of October 10, 1986, I have the honor to inform you that the provisions, in Section 2 of the Greek Special Regulations on Exportation and Importation of Merchandise, No. E4/678, of November 3, 1982, which require the surrender of exchange receipts from exports to the Bank of Greece are consistent with the Articles of Agreement of the International Monetary Fund.

Very truly yours,

François Gianviti
Director
Legal Department

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