NATIONAL ARCHIVES AND RECORDS SERVICE

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
memorandum	John E. Robson for Joseph A. Califano w/ CONFIDENTIAL attachment	10/19/66	A
memorandum	John E. Robson for Joseph A. Califano w/CONFIDENTIAL attachment	10/19/66	A
memorandum	John E. Robson for Joseph A. Califano w/CONFIDENTIAL attachments	10/4/66	A

Open 4/12/24

*posted ~~for~~ to front of the folder -CTS

FILE LOCATION

Pricing Files: Trading with the Enemy Act

RESTRICTION CODES

(A) Closed by Executive Order 11652 governing access to national security information.
(B) Closed by statute or by the agency which originated the document.
(C) Closed in accordance with restrictions contained in the donor's deed of gift.

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

October 19, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO

FROM : John E. Robson John Robson

SUBJECT: Policy Aspects of Imposing Controls on Tourist Expenditures and Capital Transfers Under The Trading With The Enemy Act

Attached is a memorandum from William B. Dale, U. S. Executive Director of the International Monetary Fund, concerning policy problems of exchange controls. I have also conferred with Mr. Dale and Treasury Assistant Secretary Winthrop Knowlton. My summary of the situation is as follows:

1. Imposition of tourist expenditure and capital transfer controls under the Trading With The Enemy Act would <u>not</u> create <u>legal</u> problems with respect to obtaining the necessary IMF approvals or jeopardizing the continuance of the method by which the U. S. satisfies its international exchange stability obligations (i.e., through the free purchase and sale of gold).

2. They have objections from the standpoint of the international money market (which I am not competent to assess):

   * The use of the Trading With The Enemy Act would raise the specter of a now unsuspected and very broad power in the Executive to impose exchange controls and might create a run of foreigners cashing in their dollars.

   * It would apparently represent a damaging concession by the U. S. that its present international monetary policies had not succeeded and could result in a serious weakening in the confidence in the dollar.

Attachment

10/19
Robbie
why not clear this out w/ Ackley
J

RECEIVED
JOE CALIFANO, JR.
1966 OCT 19 AM 9 38

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON, D.C. 20503

October 19, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO

FROM : John E. Robson

SUBJECT: Policy Aspects of Imposing Controls on Tourist Expenditures and Capital Transfers Under The Trading With The Enemy Act

Attached is a memorandum from William B. Dale, U. S. Executive Director of the International Monetary Fund, concerning policy problems of exchange controls. I have also conferred with Mr. Dale and Treasury Assistant Secretary Winthrop Knowlton. My summary of the situation is as follows:

1. Imposition of tourist expenditure and capital transfer controls under the Trading With The Enemy Act would not create legal problems with respect to obtaining the necessary IMF approvals or jeopardizing the continuance of the method by which the U. S. satisfies its international exchange stability obligations (i.e., through the free purchase and sale of gold).

2. They have objections from the standpoint of the international money market (which I am not competent to assess):

* The use of the Trading With The Enemy Act would raise the specter of a now unsuspected and very broad power in the Executive to impose exchange controls and might create a run of foreigners cashing in their dollars.

* It would apparently represent a damaging concession by the U. S. that its present international monetary policies had not succeeded and could result in a serious weakening in the confidence in the dollar.

Attachment

RECEIVED
JOE CALIFANO, JR.
1966 OCT 18 PM 6 38

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

~~CONFIDENTIAL~~

TO : Under Secretary Deming

DATE: October 4, 1966

FROM : William B. Dale
U. S. Executive Director, IMF

SUBJECT: Exchange Control over Tourist Expenditures and Capital Transfers -- Some Policy and Psychological Aspects

Legal and Equitable Aspects

I have reviewed the legal questions concerning the above contained in Mr. Smith's memorandum to Mr. Califano of September 30, 1966, together with most of the underlying material, as it relates to the IMF. For reasons that I will not develop at length here, I am satisfied that the United States can probably obtain a satisfactory legal determination from the International Monetary Fund if the U.S. decides to introduce compulsory regulations on transfers abroad for tourism and/or capital transactions under the Trading with the Enemy Act.

This view is based on the assumption that:

1. the U.S. will seek advance Fund approval for restrictions of tourist expenditures abroad, if these are introduced; and

2. the U.S. will meet head-on, rather than trying to evade, "the Deeming question" treated on pp. 4-6 of Mr. Smith's memo.

Also, from the viewpoint of equity, though not as a strictly legal matter, it would be important that the overall intensity of U.S. exchange restrictions should not go beyond a degree reasonably calculated to forestall or cope with an undue reduction of U.S. exchange reserves. That is, we would have to be able to present and defend the action as essentially defensive in character -- from a financial point of view -- and would have to be able to make a convincing case that it would not have an offensive character, i.e., that it would not reasonably be calculated to increase U.S. reserves, at the expense of other countries, to an unwarranted degree.

Policy and Psychological Aspects

Despite some feeling of assurance that I have been able to develop on the preceding aspects of the question, I am deeply troubled about the possible dangers of such a move for the United States position.

~~CONFIDENTIAL~~

1. Once the United States uses the Trading with the Enemy Act for crossing over from "voluntary" to compulsory programs of exchange control, a new vista will have been opened to both U.S. and foreign nationals. It will become clear -- which it is not at present -- that the President has very wide powers to impose exchange restrictions. Once "capital" outflow restrictions are imposed, there is a strong incentive to evade them through overinvoicing exports or underinvoicing imports, or in myriad other ways. At that point, some people will observe capital controls, but at the same time trade and other balance of payments figures will become even more suspect than they are at present. Two questions will then emerge:

    a. Since the President will have been shown to have very wide powers to invoke exchange control, the expectation that he may go further could produce market reactions of a very powerful kind on the dollar.

    b. Given the possibility that U.S. exchange controls -- under the very broad authority concerned -- could at any time be intensified to any imaginable degree, there would be a very powerful incentive, operating on both public and private foreign nationals, to turn in dollars immediately for what it is now known to be possible to get for them, rather than to hold them and see what the future might bring. Specifically, both official foreigners (by official purchases) and private foreigners (by purchases in London) could well decide that U.S. exchange controls were a precursor to an increase in the price of gold and, acting on this assumption, could bring extremely heavy pressure on that price.

The above comments are not a projection, but rather are a warning of what might happen as the result of an unprecedented departure of U.S. policy, combined with uninformed, or only half informed, opinion and speculation.

2. The market reactions described above could be worsened by official or leaked reactions from foreign official sources. I can easily imagine the adoption of the exchange controls under discussion -- even though approved in advance by the Fund, where required -- being the subject of intended or unintended comment by foreign official sources. Surely,

many of our European friends could not resist commenting that, after all of our lecturing in the postwar period, we could not in the crunch resist domestic considerations and pressures any better than they could when it came to appraising the advantages of a narrow national versus a broad international approach to our overall economic policy. That is, when the pressure is on us, we believe more in protecting the domestic economy from the consequences of the balance of payments than in the advantages of freedom in international transactions.

Because these points deal so much with reactions that are essentially psychological, rather than rational, I cannot in fairness say that I am sure of the outcome. It can only be guessed. What I am sure about is that if the psychological prognostication is badly wrong, because of being too positive, the dangers to the dollar, and to the world, would be hard to overstate.

cc: Mr. F. Smith
Assistant Secretary Knowlton

Trading with Enemy

October 19, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO

FROM : John E. Robson

SUBJECT: Policy Aspects of Imposing Controls on Tourist Expenditures and Capital Transfers Under The Trading With The Enemy Act

Attached is a memorandum from William B. Dale, U. S. Executive Director of the International Monetary Fund, concerning policy problems of exchange controls. I have also conferred with Mr. Dale and Treasury Assistant Secretary Winthrop Knowlton. My summary of the situation is as follows:

1. Imposition of tourist expenditure and capital transfer controls under the Trading With The Enemy Act would not create legal problems with respect to obtaining the necessary IMF approvals or jeopardizing the continuance of the method by which the U. S. satisfies its international exchange stability obligations (i.e., through the free purchase and sale of gold).

2. They have objections from the standpoint of the international money market (which I am not competent to assess):

   * The use of the Trading With The Enemy Act would raise the specter of a now unsuspected and very broad power in the Executive to impose exchange controls and might create a run of foreigners cashing in their dollars.

   * It would apparently represent a damaging concession by the U. S. that its present international monetary policies had not succeeded and could result in a serious weakening in the confidence in the dollar.

Attachment

JER:cg

TREASURY DEPARTMENT
ASSISTANT SECRETARY

Mr. Robson

10-11-66

Sorry for the delay on this. Let me know if you need more

WK

1. why any different if Pres or Cong exercises controls 1(a)

2. #2 ?

WINTHROP KNOWLTON

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

~~CONFIDENTIAL~~

TO : Under Secretary Deming

DATE: October 4, 1966

FROM : William B. Dale
U. S. Executive Director, IMF

SUBJECT: Exchange Control over Tourist Expenditures and Capital Transfers -- Some Policy and Psychological Aspects

Legal and Equitable Aspects

I have reviewed the legal questions concerning the above contained in Mr. Smith's memorandum to Mr. Califano of September 30, 1966, together with most of the underlying material, as it relates to the IMF. For reasons that I will not develop at length here, I am satisfied that the United States can probably obtain a satisfactory legal determination from the International Monetary Fund if the U.S. decides to introduce compulsory regulations on transfers abroad for tourism and/or capital transactions under the Trading with the Enemy Act.

This view is based on the assumption that:

1. the U.S. will seek advance Fund approval for restrictions of tourist expenditures abroad, if these are introduced; and

2. the U.S. will meet head-on, rather than trying to evade, "the Deeming question" treated on pp. 4-6 of Mr. Smith's memo.

Also, from the viewpoint of equity, though not as a strictly legal matter, it would be important that the overall intensity of U.S. exchange restrictions should not go beyond a degree reasonably calculated to fore-stall or cope with an undue reduction of U.S. exchange reserves. That is, we would have to be able to present and defend the action as essentially defensive in character -- from a financial point of view -- and would have to be able to make a convincing case that it would not have an offensive character, i.e., that it would not reasonably be calculated to increase U.S. reserves, at the expense of other countries, to an unwarranted degree.

Policy and Psychological Aspects

Despite some feeling of assurance that I have been able to develop on the preceding aspects of the question, I am deeply troubled about the possible dangers of such a move for the United States position.

~~CONFIDENTIAL~~

1. Once the United States uses the Trading with the Enemy Act for crossing over from "voluntary" to compulsory programs of exchange control, a new vista will have been opened to both U.S. and foreign nationals. It will become clear -- which it is not at present -- that the President has very wide powers to impose exchange restrictions. Once "capital" outflow restrictions are imposed, there is a strong incentive to evade them through overinvoicing exports or underinvoicing imports, or in myriad other ways. At that point, some people will observe capital controls, but at the same time trade and other balance of payments figures will become even more suspect than they are at present. Two questions will then emerge:

   a. Since the President will have been shown to have very wide powers to invoke exchange control, the expectation that he may go further could produce market reactions of a very powerful kind on the dollar.

   b. Given the possibility that U.S. exchange controls -- under the very broad authority concerned -- could at any time be intensified to any imaginable degree, there would be a very powerful incentive, operating on both public and private foreign nationals, to turn in dollars immediately for what it is now known to be possible to get for them, rather than to hold them and see what the future might bring. Specifically, both official foreigners (by official purchases) and private foreigners (by purchases in London) could well decide that U.S. exchange controls were a precursor to an increase in the price of gold and, acting on this assumption, could bring extremely heavy pressure on that price.

The above comments are not a projection, but rather are a warning of what might happen as the result of an unprecedented departure of U.S. policy, combined with uninformed, or only half informed, opinion and speculation.

2. The market reactions described above could be worsened by official or leaked reactions from foreign official sources. I can easily imagine the adoption of the exchange controls under discussion -- even though approved in advance by the Fund, where required -- being the subject of intended or unintended comment by foreign official sources. Surely,

many of our European friends could not resist commenting that, after all of our lecturing in the postwar period, we could not in the crunch resist domestic considerations and pressures any better than they could when it came to appraising the advantages of a narrow national versus a broad international approach to our overall economic policy. That is, when the pressure is on us, we believe more in protecting the domestic economy from the consequences of the balance of payments than in the advantages of freedom in international transactions.

Because these points deal so much with reactions that are essentially psychological, rather than rational, I cannot in fairness say that I am sure of the outcome. It can only be guessed. What I am sure about is that if the psychological prognostication is badly wrong, because of being too positive, the dangers to the dollar, and to the world, would be hard to overstate.

cc: Mr. F. Smith
Assistant Secretary Knowlton

Trading with the Enemy Act

October 4, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM: John E. Robson

SUBJECT: International Monetary Considerations in Capital Outflow and Tourist Expenditure Controls

Summarized below is the attached memo from the General Counsel of Treasury which considers the effect of international monetary obligations where capital outflow and tourist expenditure controls are imposed under the Trading With The Enemy Act.

1. Treasury concurs with Justice's recent opinion that, as a matter of internal U. S. law, the Trading With The Enemy Act authorizes imposition of these types of controls. However, Treasury suggests that declaration of a new national emergency is desirable (but not absolutely required legally).

2. As to obligations under the International Monetary Fund and OECD Agreements:

   * IMF approval of tourist expenditure limitations would be required but could probably be obtained since many other IMF members impose them. OECD obligations requiring the allowance of certain levels of expenditures for international travellers can probably be avoided under provisions permitting a member to "temporarily suspend" these requirements if the member's "overall balance of payments develops adversely at a rate and in circumstances . . . which the member considers serious."

   * Capital outflow controls can be imposed without IMF approval. Transactions which are essentially current in nature (e.g. short term loans to finance foreign trade, etc.) are not considered capital transfers and require IMF approval. The balance of payments exception mentioned above would permit suspension of any inconsistent OECD obligations.

3. Notwithstanding the above, a difficult international monetary exchange problem could arise under IMF commitments if the imposition of controls is considered a default on the U. S. obligation to maintain exchange stability through the free purchase and sale of gold. We are the only nation which maintains the exchange stability in this manner. Although Treasury counsel believes there is a significant risk of a default finding by the IMF, this is basically a complex monetary-economic question rather than a legal problem. Accordingly, the issue is now being studied by Fred Deming's people for a definitive answer as to the scope of capital outflow and tourist expenditures which can be imposed without incurring international monetary exchange difficulties.

JERobson:cg

October 3, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: International Monetary Considerations in Capital Outflow and Tourist Expenditure Controls

Summarized below is the attached memo from the General Counsel of Treasury which considers the effect of international monetary obligations where capital outflow and tourist expenditure controls are imposed under the Trading With The Enemy Act.

1. Treasury concurs with Justice's recent opinion that, as a matter of internal U. S. law, the Trading With The Enemy Act authorizes imposition of these types of controls. However, Treasury suggests that declaration of a new national emergency is desirable (but not absolutely required legally).

2. As to obligations under the International Monetary Fund and OECD Agreements:

* IMF approval of tourist expenditure limitations would be required but could probably be obtained since many other IMF members impose them.

  OECD obligations requiring the allowance of certain levels of expenditures for international travellers can probably be avoided under provisions permitting a member to "temporarily suspend" these requirements if the member's "overall balance of payments develops adversely at a rate and in circumstances .... which the member considers serious."

* Capital outflow controls can be imposed without IMF approval. Transactions which are essentially current in nature (e.g. short term loans to finance foreign trade, etc.) are not considered capital transfers and require IMF approval. The balance of payments exception mentioned above would permit suspension of any inconsistent OECD obligations.

3. Notwithstanding the above, a ~~serious~~ difficult international monetary exchange problem ~~can~~ could arise under IMF commitments if the imposition of controls is considered a default on the U. S. obligation to maintain exchange stability through the free purchase and sale of gold. We are the only nation which maintains the exchange stability in this manner.

* ~~Such a finding by IMF would apparently create very difficult international monetary problems for the U. S.~~

Although Treasury counsel believes there is a significant risk of a default finding by the IMF, this is basically a complex monetary-economic question rather than a legal problem. Accordingly, the issue is now being studied by Fred Deming's people for a definitive answer as to the scope of capital outflow and tourist expenditures which can be imposed without incurring international monetary exchange difficulties.

~~CONFIDENTIAL~~

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

SEP 3 0 1966

MEMORANDUM FOR MR. CALIFANO

Subject: Power to Control Tourist Expenditures and Capital Transfers

Assuming that it is not possible to proceed through a new legislative request for authority to contain the movement of funds from the U.S. due to capital outflows and tourist expenditures, it would be possible to deal with this problem through regulation of capital transfers abroad and by placing limitations on the amount of money which American travelers can spend abroad.

Regulation of these transactions could be imposed under Section 5(b) of the Trading with the Enemy Act. Although the 1950 declaration of national emergency would probably be sufficient, in the situation under consideration a new declaration of national emergency would be desirable so as to assure that the new regulations could not be challenged in court on the ground that the 1950 emergency was unrelated to the present balance of payments problem.

It should be noted that any system of controls which does not regulate all overseas transfers could result in leakages, which might cause criticism of the program. However, the controls would assure a very significant reduction in the controlled expenditures. Moreover, since the penalties for violation are heavy ($10,000 fine and/or 10 years in jail for each offense), it can be expected that leakages would be minimal in the area of capital investment by large firms and probably not significant even in the tourist area.

Controls on capital outflow and tourist expenditures would, however, raise problems concerning our obligations under the International Monetary Fund Articles of Agreement. It is likely that a limited imposition of such restrictions, such as controls on travelers' expenditures overseas or on a single type of capital outflow, could be reconciled with our Fund obligations. It would be more difficult to assure that the Fund Executive Directors would continue to hold that the U.S. was meeting its Fund obligations if extensive controls of both capital and overseas travel expenditures were imposed.

~~CONFIDENTIAL~~

An attached memorandum sets forth the legal authority to impose restrictions on capital outflow and overseas travel expenditures and explains in full detail the nature of our international obligations.

I have addressed myself exclusively to the legal issues. Imposition of controls on tourist expenditures and/or on capital transfers raises vital international financial policy questions which must be given careful consideration.

Fred B. Smith

Fred B. Smith

Attachment

CONFIDENTIAL

THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON, D.C. 20220

SEP 3 0 1966

MEMORANDUM

Subject: Power to Control Tourist Expenditures and Capital Transfers

A. Section 5(b) of the Trading with the Enemy Act

Section 5(b) of the Trading with the Enemy Act authorizes the President or his delegate, in time of war or national emergency to control all current transactions as well as all capital transfers. Examples of the types of transactions that may be prohibited or controlled are:

1) Tourist Expenditures

Amounts to be spent abroad by travelers can be regulated, including:

a) cash, travelers checks, letters of credit, etc. carried by individual travelers;

b) checks or other instruments cashed abroad by American travelers; and

c) any other form of American travelers' expenditures abroad.

2) Capital Transfers

We can control all forms of financial transactions, whether they be capital transfers or for current account, and almost regardless of the form they take. The regulations can be drafted as broadly or as narrowly as is desired; they can control all types of capital transactions or only limited forms. (There are, of course, advantages and disadvantages to both approaches).

Capital transfers for foreign investment purposes may be restricted in whole or in part. Examples of the forms of capital transfer which could be controlled are:

a) direct equity investment abroad by U.S. individuals or firms;

b) equity investment by banks or other institutions;

c) capital loans made by banks, business firms, or individuals. This would include portfolio loans, loans for construction purposes, etc. Some loans are regarded as current transfers, e.g. loans to finance exports of grain and should

CONFIDENTIAL

be exempted from a capital control. (Short term banking and credit facilities related to the financing of trade are considered current account transactions under the IMF Articles; see below). Others may be capital transactions, e.g., a long-term loan to finance export of a complete factory;

d) guarantees of foreign loans; and,

e) transfers of earnings from one foreign subsidiary to another instead of normal repatriation of earnings, as a device to evade the restrictions on direct transfers.

One possible technique to evade the control which would be difficult to regulate via Section 5(b) would be the retention of earnings by a foreign subsidiary for its own operational purposes instead of remitting them as dividends to the U.S. parent. Even here, however, we could discourage such actions by providing in the Regulations a specific prohibition against any transaction which has the effect of evading the basic prohibitions contained therein. This technique has been employed in the past in Section 500.201(c) of the Treasury's FAC Regulations issued under Section 5(b).

Declaration of National Emergency

Section 5(b) powers may be exercised only during time of war or during any other period of national emergency declared by the President. A Presidential declaration of national emergency was made in 1950 at the time of the Korean War and relates to Communist aggression in the Far East and elsewhere (Proclamation 2914, December 16, 1950 31 CFR 1949-53 compilation p.99) and was confirmed in three Executive Orders since 1960 (E.O. 10896, Nov. 29, 1960; E.O. 10905, Jan. 14, 1961 and E.O. 11037, July 20, 1962). This declaration of emergency has been used to support the Foreign Assets Control Regulations (31 CFR 500. 101-500.808), the Cuban Assets Control Regulations (31 CFR Part 515) and the Gold Regulations (31 CFR 54.1-54.52, 54.83).

If it is deemed unwise to make a new declaration of national emergency, it would be possible to act on the basis of the existing declaration, The rationale would be that the balance of payments problem is caused in large part by military expenditures abroad to counter Communist aggression in Viet Nam and elsewhere.

However, there may be legal difficulties in relying on a declaration of emergency which was completely unrelated to the present balance of payments situation even though that problem is directly related to the Viet Nam war and resistance to Communist aggression. There have been a number of legal challenges to our continued exercise of the power to control gold dealings under the Gold Regulations and our power to control transfers with Cuba under the Cuban Assets Control Regulations based on the 1950 declaration of national emergency. The Courts have so far sustained the Treasury position (Pike v. U.S., 340 F.2d 487(C.A.9 1965); Sardino v. The Federal Reserve Bank of New York, 361 F.2d 106 (C.A.2 1966) petition for certiorari pending). However, there can be little doubt that capital and overseas travelers' expenditure controls based on the 1950 declaration of emergency would be subject to an all-out legal attack in the courts. A new declaration of national emergency which combined balance of payments reasons with the continuing 1950 emergency caused by communist aggression in Viet Nam and elsewhere would assure that the regulations would be immune from legal challenge on the ground that a declaration of national emergency was unrelated to the controls imposed.

B. Restrictions on Travelers' Expenditures Abroad -- IMF and OECD Obligations

Controls on travelers' expenditures abroad would be a current account restriction which may not be imposed without the approval of the International Monetary Fund. (Art. VIII, Sec. 2(a); Art. XIX(i)(1)). It would thus be necessary for the U.S. to seek Fund approval of regulations limiting expenditures by American travelers abroad.

The U.S. could probably obtain Fund approval for such restrictions.

The U.S. also has international obligations under the OECD Code of Liberalization of Current Invisible Operations to allow a minimum of 700 units of account per person per journey and to allow supplementary amounts upon justification. In addition, travelers must be automatically authorized to pay in domestic currency for tickets required for their journey. However, Article 7 of the Code provides that: "If the overall balance of payments of a Member develops adversely at a rate and in circumstances, including the state of its monetary reserves, which it considers serious that Member may temporarily suspend the application of measures of liberalization taken or maintained in accordance with the provisions of Article 2(a)." Thus, subject to continuing review by the OECD, the United States may be excused from the obligations of the Code on balance of payments grounds.

C. Restrictions on Capital Transfers -- IMF and OECD Obligations

No approval from the International Monetary Fund is needed to impose restrictions on capital transfers. (Art. VI, Sec. 3; EB Decision No. 541-(56/39) July 25, 1956).

Article VI, Section 3 of the Fund Articles provides that members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments. Overseas loans are capital transfers, except short term banking and credit facilities related to the financing of trade which are current account transactions.

The Fund has authority under Article XIX(i) to determine whether certain specific transactions are to be considered current transactions or capital transactions. Whether a particular item is a capital or current transaction is not of particular significance in the present case. It is probable that the U.S. could obtain Fund approval for current account restrictions that it wished to impose. It would be difficult for the other members of the Fund to deny to the United States the right to impose measures that they regularly use themselves to meet balance of payments problems. However, any restrictions on capital or current account will raise the question of whether the U.S. can continue to be deemed to be fulfilling its exchange stability obligations by freely buying and selling gold. This question is discussed below under the heading "The Deeming Question."

Thus the principal issue seems to be not whether a particular item is capital account, for which no Fund approval is needed, or current account, for which Fund approval is needed, but whether the U.S. would continue to be deemed to be fulfilling our exchange stability obligations by freely buying and selling gold after the imposition of such restrictions.

The United States also has obligations to allow a whole variety of different types of capital movements under the OECD Code of Liberalization of Capital Movements. However, Article 7 of the Capital Code has the same balance of payments exception as the Invisibles Code described above.

D. The "Deeming" Question

The imposition of restrictions on current account, whether or not submitted to the Fund for approval, raises a question about some of our basic obligations under the Fund Articles. The foundation of the international monetary system under the Fund is fixed exchange rates. All Fund members undertake to maintain this commitment to fixed exchange rates. All Fund members but the U.S. observe this commitment by buying and selling their own currency for dollars in their domestic exchange markets and in this way maintain the value of their currency within certain fixed limits.

The U.S. is in a special position.

We do not engage in exchange market operations for the purpose of maintaining the value of the dollar. The U.S. is deemed to be fulfilling its exchange stability obligations by virtue of its commitment to freely buy and sell gold at the fixed price of $35 an ounce. The reason why a member which is freely buying and selling gold for the settlement of international transactions is, in effect, released from the obligation to maintain its exchange rate by exchange market intervention is that such member promotes exchange stability by maintaining the value of its own currency in relation to gold.

In 1948, in an opinion by the Fund legal staff (Staff Memorandum No. 174 Jan. 31, 1948), it was held that in order to be deemed to be fulfilling exchange stability obligations by freely buying and selling gold, the member concerned must impose no exchange restriction of any kind whether on capital or current transactions. The rationale offered for this conclusion was that if a country maintains no restrictions whatever on exchange transactions, transactions within its territories outside the prescribed margins could not continue, as the result of its own actions, for any significant period. However, the action of a country in imposing restrictions, whether on current or capital transactions, may be responsible for transactions taking place in its market outside the margins prescribed by the Fund.

The imposition of exchange restrictions of any kind -- capital or current account -- by the U.S., whether or not they were submitted to the Fund for approval, would undoubtedly lead to a discussion in the Fund Executive Board on whether the U.S. could still be deemed to be fulfilling its exchange stability obligations by freely buying and selling gold. If the Executive Directors held that the U.S. could no longer be deemed to be fulfilling its exchange stability obligations by freely buying and selling gold, this could have serious effects on international confidence in the dollar. Moreover, to meet its obligations under the Articles, the U.S. would have to maintain its exchange rate by buying and selling other currencies. Foreign currencies would have to be obtained through a variety of financial transactions such as sale of gold, swaps, sale of Roosa bonds and IMF drawings.

The 1948 Fund staff paper is by no means unchallengeable on legal grounds. No Executive Board decision has been taken on this question and at the time of discussion of the Fund paper, one Executive Director noted his inability to agree with it. If the restrictions are limited or confined to a limited number of items, such as to travelers expenditures, it can be said with some confidence that we would be able to resist a decision in the Fund that we were no longer fulfilling our exchange stability obligations by freely buying and selling gold. On the other hand, if restrictions are applied to a wide variety of capital and current account items, it becomes significantly more difficult to maintain the position in the Fund that we could continue to be deemed to be fulfilling our exchange stability obligations by freely buying and selling gold.

E. Security Exception

Both the OECD Code and the IMF, by interpretation of the Articles, have national security exceptions. Article 3 of each of the OECD Codes simply provides that the provisions of the Codes shall not prevent a member from taking action which it considers necessary for the protection of its essential security interests or for the fulfillment of its obligations relating to international peace and security.

There is no exception, as such, in the IMF Articles of Agreement for current account restrictions imposed on national security grounds. However, the Fund Executive Directors have decided that the Fund is not a suitable forum for discussions of political and military considerations. (EB Decision No. 144(52/51)). Nevertheless, the Fund maintains the right to determine whether a measure ostensibly imposed for security reasons is in fact motivated by economic considerations. Thus, a member imposing restrictions on current international transactions for security reasons is merely required to inform the Fund of the restrictions as promptly as circumstances permit, but ordinarily not later than thirty days after imposing them. Unless the Fund informs the member within thirty days after receiving notice from the member that it is not satisfied that the restrictions are imposed solely to preserve security, the member may assume that the Fund has no objection to the imposition of the restrictions.

A case might be made that our balance of payments measures are being imposed because of the Vietnamese War problem. For instance, in his speech to the Fund Governors on September 28, Secretary Fowler said "If we have not made further progress in our balance of payments problem this year, the chief reason is the foreign exchange cost of the shield of freedom that I have just been discussing. The U.S. has, at present, a net international payments deficit on military account of $2.6 billion -- this is not the budgetary cost but the foreign exchange drain."

Resort to the national security exception as far as the Fund is concerned, only avoids the necessity of obtaining the Fund approval for restrictions on current account transactions. The U.S. could still be challenged, and probably would be challenged, on whether we would be deemed to be fulfilling our exchange stability obligations by freely buying and selling gold.

Thus, not much is gained by invoking the national security exception and much might be lost in terms of alienation of support which we would otherwise receive on the "deeming" question if we directly requested approval from the Fund for any restrictions on current account that we imposed.

F. Restrictions by Other Countries

A large number of countries including many industrial countries such as the United Kingdom, Japan, the Netherlands and France, have capital transfer restrictions and restrictions on the amount of money which tourists may spend abroad. These countries have the approval of the IMF for their tourist expenditure restrictions. As noted above, Fund approval is not needed for capital restrictions. Other countries do not have the same problems as the U.S. in reconciling their restrictions with the Articles of Agreement since they do not fulfill their exchange stability obligations by freely buying and selling gold as does the U.S. and thus do not run up against the "deeming" question.

Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, as Amended

TRADING WITH THE ENEMY ACT OF OCTOBER 6, 1917, 40 STAT. 411, AS AMENDED

AN ACT To define, regulate, and punish trading with the enemy, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Trading with the Enemy Act."

* * * * *

SEC. 5 * * * (b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

U. S. TREASURY DEPARTMENT
MAIN BUILDING

DATE 9/27/66

TO Mr. John Robson

Here is the paper I promised you.

I feel certain that Secretary Fowler would be strongly opposed to this course of action at the present time.

FBS

F.B.S.

(1) Borrowing money?

(2) "Appreciation" of direct investments?

(3) Capital transaction

Fred B. Smith

Room 3000 Ext. 2093-4

184-

~~CONFIDENTIAL~~

TECHNIQUES FOR RESTRICTING AMOUNTS SPENT BY AMERICANS TRAVELING ABROAD

Assuming that it is not possible to proceed through a new legislative request for authority to deal with the outflow of funds from the U.S. through tourist expenditures, it would be possible to deal with this problem through regulation of the amount of money which American travelers can spend abroad. These regulations could be imposed under Section 5(b) of the Trading with the Enemy Act. It should be noted that regulations that would be limited to restricting the amounts that Americans could spend abroad might not be easy to administer and might be subject to evasion. Such regulations would also raise problems concerning our obligations under the International Monetary Fund Articles of Agreement. However, if the balance of payments problem is deemed serious enough to impose restrictions on tourist expenditures, it is possible to reconcile such restrictions with our Fund obligations. This memorandum explains the nature of our Fund obligations and the course of action we would have to take in reconciling such measures with the Fund Articles.

Article VIII, Section 2(a) provides that ". . . no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions." Article XIX defines "payments for current transactions" as those "which are not for the purpose of transferring capital, and includes, without limitation: 1) all payments due in connection with foreign trade or other current business, including services, and normal short-term banking and credit facilities; 2) payments due as interest on loans and as net income from other investments; 3) payments of moderate amounts for amortization of loans and for appreciation of direct investments." The Fund may, after consulting with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

The Fund has broadly construed the meaning of the term "restrictions on current payments and transfers." In a decision taken in 1952 (No. 144-(52/51)) the Executive Directors stated that "Article VIII, Section 2(a) in conformity with its language applies to all restrictions on current payments and transfers, irrespective of the motivation and the circumstances in which they are imposed." It would be difficult indeed to devise techniques to reduce the expenditure of dollars abroad by Americans without imposing a restriction on current transactions. While it would be possible for the U.S. to argue that a particular regulatory scheme was not a restriction on current payments, and that no Fund approval was required, we would undoubtedly be challenged by a number of Executive Directors e.g. the French. Moreover, we would be on weak legal ground in resisting the jurisdiction of the Fund over what was admittedly intended as a balance of payments measure and in reality designed to restrict current payments from the U.S. As a result, it might be difficult to muster the votes in the Fund Board in order to turn back any assertion of Fund jurisdiction.

~~CONFIDENTIAL~~

Since, in any event, there is likely to be a full Fund discussion of any measure restricting current payments, it might be wise to anticipate such a discussion and submit any such action for approval under Article VIII, Section 2(a). It is highly unlikely that the Fund would withhold its approval from a reasonable measure taken to improve the U.S. balance of payments position.

However, submission of current account restrictions to the Fund for approval is likely to raise the question of whether the U.S. was fulfilling its exchange stability obligations under the Fund Articles of Agreement. The Articles provide that members shall fulfill their exchange stability obligations by keeping their "spot" exchange transactions within their territories within 1 percent of their par value (Art. IV Sec. 4(b)). However, a member whose monetary authorities, for the settlement of international transaction, in fact freely buy and sell gold within par value limits "are deemed to be fulfilling" the obligation to keep exchange transactions within its territory within par value limits. (Art. IV, Section 4(b), Second Sentence) The U.S. is the only Fund member that is deemed to be fulfilling its exchange stability obligation through the technique of freely buying and selling gold.

In 1948 in an opinion by the Fund legal staff, it was held that in order to be deemed to be fulfilling a member's exchange stability obligations by freely buying and selling gold, the country concerned "must impose no exchange restrictions of any kind whether on capital or current transactions."

Thus, the imposition of exchange restrictions and the approval by the Fund would undoubtedly lead to a discussion of the question of whether the U.S. could still be deemed to be freely buying and selling gold. If the International Monetary Fund should hold that the U.S. could no longer be deemed to be fulfilling its exchange stability obligations by freely buying and selling gold, this could have serious effects on international confidence in the dollar. Moreover, the U.S. would be forced to fulfill its exchange stability obligations by keeping exchange transactions within its territory within 1 percent of par. In order to do this, the U.S. would have to acquire foreign currencies through a variety of financial transactions such as, sale of gold, swaps, sale of Roosa bonds and IMF drawings. It is doubtful whether it would be possible to obtain foreign currencies through these techniques, other than through the sale of gold.

However, the U.S. would be in a much better position to challenge the validity of the 1948 Fund legal opinion, than it would be to resist completely the jurisdiction of the Fund over a matter which clearly appeared to be a current account exchange restriction. In fact, at the time of the discussion of the Staff paper embodying the conclusion that a member could not be deemed to be freely buying and selling gold if it imposed exchange restrictions of any kind, one Executive Director specifically recalled his inability to agree with this Staff conclusion. Thus, we would be in a much better position to challenge this 1948 Staff view than to challenge the basic jurisdiction of the Fund over its exchange restrictions jurisdiction.

A large number of countries including many industrial countries such as the United Kingdom, Japan, the Netherlands and France, have restrictions on the amount of money which tourists may spend abroad. These countries have the approval of the IMF for these restrictions. They do not have the same problems as the U.S. of obtaining Fund approval of their measures since they do not fulfill their exchange stability obligations by freely buying and selling gold as does the U.S.

It should be noted that the United States has obligations under the OECD Code of Liberalization of Current Invisible Operations to allow a minimum of 700 units of account per person per journey and to allow supplementary amounts upon justification. In addition, travellers must be automatically authorized to pay in domestic currency for tickets required for their journey.

However, Article 7 of the Code provides that: "If the overall balance of payments of a Member develops adversely at a rate and in circumstances, including the state of its monetary reserves, which it considers serious that Member may temporarily suspend the application of measures of liberalization taken or maintained in accordance with the provisions of Article 2(a)." Thus, subject to continuing review by the OECD, the United States may be excused from the obligations of the Code on balance of payments grounds.

Fred B. Smith

Len Skubal – OEP

1* validation + modified sanctions by incorporation

2. What kinds of Controls

a* selective – Mfg. / wholesale / retail ? services / Food ? Agricultural (?) / services *

b* Services
Food + farm (Agriculture)

3* LEAK – "DESTRUCTIVE"

4* OEP legis / Hill Legis → England

Gen. Controls
administered ad hoc case by
by industry
by commodity

5* Pre-review device (Reuss) file + cooling off

6* Price or wage justification Bd — Post Audit

7* OPACS + voluntary "bounce" point

8* Margin Control v. Fixed Price

October 5, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Price-Wage Controls Under the Trading With The Enemy Act

This question has been reviewed with the Acting Attorney General, the Assistant Attorney General (Office of Legal Counsel) and members of his staff, and Dave Ginsburg. The attached memorandum discusses at greater length various legal and other considerations which I have summarized below:

1. There are substantial obstacles against the conclusion that price and wage controls can be imposed under the Trading With The Enemy Act at this time. However, legal arguments can be made to support the use of the Act to impose such controls, which, depending on the severity of the emergency, may win acceptance by the courts and Congress.

   * Extreme caution must be used in employing the Act for this purpose. It may be noted that Congressional ratification was given for each prior unorthodox use of the Act (Bank Holiday, gold controls, foreign asset freezes and consumer credit control).

   * Assessment of the practical likelihood of there being a court test of such controls and measurement of the Government's chances in court can be useful only when made very near the time it is desired to impose the controls and with reference to the precise circumstances of the national emergency then existing.

   * Use of the Act for price-wage controls at the date of this writing raises a substantial risk of the Government's action being tested in court and leaves the Government with the short odds for winning.

2. Some of the technical and practical difficulties in using the Trading With The Enemy Act for price-wage controls are:

   * Legislation enacted in 1946 in connection with the extension of the Second War Powers Act may evince an existing Congressional intent against the use

of other than specific price-control legislation to impose such controls.

* Absence of helpful statutory language or historical precedent to support this relatively unorthodox use of the Act (compared, for example, to consumer credit controls, where the history since the initial Executive Order of 1941 aids us).

* Cumbersome mechanics for imposing and enforcing the controls.

3. The device employed during the months preceding the Emergency Price Control Act of 1942 has been suggested as a possible alternative course for consideration:

* Then, the price stabilization effort was formalized through an agency (OPACS) set up by Executive Order without specific statutory authorization.

* Maximum price orders were issued by the agency for many commodities. Although there was no clear statutory basis for enforcement of the orders ("jawbone", publicity and assorted Government "levers" served as the principal tools), the effort gained respectability, achieved a fair degree of compliance and sensitized the nation to stabilization problems.

* Legal power exists to institute a similar program at the present time.

JER:cg

October 5, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Price-Wage Controls Under The Trading With The Enemy Act

This question has been reviewed with the Acting Attorney General, the Assistant Attorney General (Office of Legal Counsel) ~~Frank Wozencraft~~ and members of his staff, and Dave Ginsburg. The attached memorandum discusses at greater length various legal and other considerations which I have summarized below:

1. There are ~~lines of argument which permit~~ substantial obstacles against the ~~legal~~ conclusion~~s~~ that price and wage controls can be imposed under the Trading With The Enemy Act at this time. However, ~~because~~ legal arguments can be made to support the use of the Act to impose such controls, ~~of a number of factors which support a not insubstantial legal argument that the Act does not authorize this type of action:~~ which, depending on the severity of the emergency, may win acceptance by the courts and Congress.

Single Space

   * Extreme caution must be used in employing the Act for this purpose~~; the~~. It may be noted ~~history of the Act suggesting~~ that Congressional ratification was given for each prior ~~of an~~ unorthodox use of the Act ~~is perhaps a necessary ingredient for the legality of that exercise of the power. (Such ratification was given in the~~ (Bank Holiday, gold controls, foreign asset freezes ~~of 1941~~ and consumer credit control) ~~cases.)~~

   * Assessment of the practical likelihood of there being a court test of such controls and measurement of the Government's chances in court can be useful only when made very near the time it is desired to impose the controls and with reference to the precise circumstances of the national emergency then existing.

   * Use of the Act for price-wage controls at the date of this writing raises a substantial risk of the Government's action being tested in court and ~~probably~~ leaves the Government with the short odds for winning.

2. Some of the technical and practical difficulties in using the Trading With The Enemy Act for price-wage controls are:

   * Legislation enacted in 1946 in connection with the extension of the Second War Powers Act may evince an existing Congressional intent against the use

of other than specific price ~~[illegible]~~ control legislation to impose such controls. ~~(this, however, is not an insuperable legal barrier).~~

* Absence of helpful statutory language or historical precedent to support this ~~a~~ relatively unorthodox use of the Act (compared, for example, to consumer credit controls, where the history since the initial Executive Order of 1941 aids us).

* Cumbersome mechanics for imposing and enforcing the controls. ~~[illegible]~~

3. The device employed during the ~~year or so~~ months preceding the Emergency Price Control Act of 1942 has been suggested as a possible alternative course for consideration:

   * Then, the price stabilization effort was formalized through an agency (OPACS) set up by Executive Order without specific statutory authorization. ~~(although the program was given as much of a legal shroud as the lawyers' ingenuity could devise).~~

   * Maximum price ~~schedules~~ orders were issued by the agency for many commodities. Although there was no clear statutory basis for enforcement of the ~~schedules~~ orders ("jawbone", publicity and assorted Government "levers" served as the principal tools), the effort gained respectability, achieved a fair degree of compliance and sensitized the nation to stabilization problems.

   * Legal power exists to institute a similar program at the present time.

Trading with The

October 5, 1966

1st DRAFT

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Price-Wage Controls Under The Trading With The Enemy Act

This question has been reviewed with the Acting Attorney General, Frank Wozencraft and members of his staff, and Dave Ginsburg. The attached memorandum discusses at greater length various legal and other considerations which I have summarized below:

1. There are lines of argument which permit the legal conclusion~~s~~ that price and wage controls can be imposed under the Trading With The Enemy Act. However, because of a number of factors which support a not insubstantial legal argument that the Act does not authorize this type of action:

   * Extreme caution must be used in employing the Act for this purpose; the history of the Act suggesting that Congressional ratification of an unorthodox use of the Act is perhaps a necessary ingredient for the legality of that exercise of the power. (Such ratification was given in the Bank Holiday, foreign asset freezes of 1941 and consumer credit control cases.)

   * Assessment of the practical likelihood of there being a court test of such controls and measurement of the Government's chances in court can be useful only when made very near the time it is desired to impose the controls and with reference to the precise circumstances then existing.

   * Use of the Act for price-wage controls at the date of this writing raises a substantial risk of the Government's action being tested in court and probably leaves the Government with the shorter odds for winning.

2. Some of the technical and practical difficulties in using the Trading With The Enemy Act for price-wage controls are:

   * Legislation enacted in 1946 in connection with the extension of the Second War Powers Act may evince an existing Congressional intent against the use

of other than specific price-wage control legislation to impose such controls (this, however, is not an insuperable legal barrier).

* Absence of helpful statutory language or historical precedent to support a relatively unorthodox use of the Act (compared, for example, to consumer credit controls where history aids us).
* Cumbersome mechanics for imposing and enforcing the controls.

3. The device employed during the year or so preceding the Emergency Price Control Act of 1942 has been suggested as a possible alternative course for consideration:

   * Then the price stabilization effort was formalized through an agency (OPACS) set up by Executive Order without specific statutory authorization (although the program was given as much of a legal shroud as the lawyers' ingenuity could devise).
   * Maximum price schedules were issued by the agency for many commodities. Although there was no statutory basis for enforcement of the schedules ("jawbone", publicity and assorted Government "levers" served as the principal tools), the effort gained respectability, achieved a fair degree of compliance and sensitized the nation to stabilization problems.
   * Legal power exists to institute a similar program at the present time.

MEMORANDUM

Re: <u>Legal authority to control prices and wages under § 5(b) of the Trading with the Enemy Act</u>

This memorandum considers the legal authority of the President to impose controls over prices and wages under the provisions of § 5(b) of the Trading with the Enemy Act which give the President, during war or national emergency, authority to regulate or prohibit "payments between, by, through, or to any banking institution." The present effectiveness of the national emergency proclaimed by President Truman on December 16, 1950, is explained in the memorandum attached to Assistant Attorney General Wozencraft's letter to the President dated September 27, 1966. Reference is also made to that memorandum for a more detailed analysis of the development of the present broad language of § 5(b) and of the history of its use to impose consumer credit and other economic controls.

I. Basic Conclusions

For the reasons to be discussed in this memorandum, serious obstacles exist to the use of § 5(b) as legal authority for imposition of a system of price-wage controls at the present time.

There is no direct precedent for Presidential imposition of legally enforceable price or wage controls, under § 5(b) or otherwise.

While President Roosevelt made innovating use of § 5(b) in successive crises to control other economic matters, */ the history of previous price and wage controls, to be outlined below, is in sharp contrast with the history respecting the prior exercises of § 5(b) power. Here it is a history of much closer Congressional control over the imposition and terms of price and wage controls, once it became necessary to supplant essentially voluntary measures with mandatory controls.

---

*/ To declare a bank holiday and to control outflow of gold and currency in the economic crises of 1933-34; to "freeze" foreign assets as World War II affected various countries in 1940-41; and to impose a system of consumer credit controls as defense needs created inflationary pressures in August 1941. Each new exercise of the power was followed shortly by express Congressional ratification, together with expansion of the language of § 5(b). To the limited extent that court decisions later dealt with the exercise of Presidential power in these instances, they upheld it.

Moreover, in 1946 Congress enacted a rule of construction which poses an additional obstacle to resorting to general powers such as § 5(b) as a means of setting maximum prices.

However, there are legal arguments which could be made to support use of § 5(b) for price and wage controls. In a crisis situation, these arguments might overcome the obstacles to acceptance of such use of the power by Congress and the courts.

There are two theories which can be asserted for bringing control of prices and wages within the broad but unspecific language of § 5(b). The <u>first</u> or direct approach would have the President exercise his power to define terms used in the section, such as "banking institution" and "payments," so broadly as to bring payments of the price of goods or of wages of employees specifically within the regulatory power under the section. The <u>second</u> or indirect approach would not extend definitions under the section beyond banking transactions in the conventional sense, but would apply the regulatory power to condition the use of the banking system by a business on its compliance with specified price or wage limits.

The first approach would be similar to the technique utilized in 1941 in the Executive Order imposing consumer credit controls under § 5(b), while the second is suggested by the technique used in 1933-34 in imposing a bank holiday and gold controls under the section. With respect to controlling prices or wages, however, each approach presents serious difficulties in terms of the language of § 5(b). Neither approach has previously been used to regulate a subject as far beyond the section's basic scope of banking and international transactions as would be the case with price or wage controls.

II. Previous Price Control Experience

Developments Prior to Emergency Price Control Act

Efforts to control prices in World War II date from May 29, 1940, when divisions concerned with the prices of raw materials and retail goods were established in an advisory council on national defense. No Executive Order was issued for this purpose. At first, strictly informal methods were used to check inflation. Thereafter, on February 17, 1941, the first of a series of price schedules was issued. 6 F.R.

1021. These schedules listed "reasonable limitations" as to what might be charged, but were not legally enforceable.*/

On April 11, 1941 the President established the Office of Price Administration and Civilian Supply by Executive Order No. 8734, 6 F.R. 1917. The Order stated it was based on "the authority vested in me by the Constitution and the statutes." It also referred to various statutory powers of the President, which the agency could either exercise or recommend exercise of, but the Order did not mention § 5(b). The new agency continued to issue formal price schedules, as its predecessor had done. It, too, lacked legal enforcement powers, and continued to rely on publicity, persuasion and indirect economic sanctions, in lieu of direct sanctions.

Statutory Regulation

The Emergency Price Control Act ("EPCA") was enacted

*/ This was somewhat similar to the technique used during World War I. During that war some prices had been fixed without statutory authority by a piecemeal process based on the commandeering and priority powers of various government departments. Enforcement was undertaken by the industries affected.

at the end of January 1942, having been under consideration in Congress since the previous summer. 56 Stat. 23. The Act empowered the Price Administrator to put ceilings over any prices that had risen or threatened to rise, and over rents, and it made his orders legally enforceable.

The EPCA forbade the Administrator to regulate agricultural prices until they exceeded 110 per cent of parity or the levels reached during any one of three previous periods, whichever was highest. It also required him, when fixing prices for processed goods, to set them high enough to cover the prices thus established for agricultural raw materials. The Act made no provision for the control of wages.

Under the EPCA selective price controls for large wholesale markets were first attempted. This technique had the effect of tailoring the regulated price schedules to the needs of each industry affected, but required a great deal of time and personnel to work through the technical details of pricing in an industry in order to develop each separate measure. See, e.g., Prices for Wool Waste (7 F.R. 3088-3096).

Therefore, on April 28, 1942, OPA issued a general maximum price regulation freezing all prices (save those specifically exempted) at the highest levels obtaining in the month of March. 7 F.R. 3153.

On October 2, 1942, Congress passed the Stabilization Act (56 Stat. 765), authorizing the Price Administrator to put ceilings over agricultural prices at parity or at the highest figure obtaining in 1942, whichever was higher, and forbidding employers to raise wages without the approval of the War Labor Board.

On April 3, 1943, the President issued a "hold-the-line" order, directing the stabilization authorities to hold future wage and price increases to the minimum amounts required by law. In May the OPA established maximum retail prices for foodstuffs which reduced the prices of major items; to hold these reduced prices OPA paid subsidies to their processors equal to the price roll-back.

With the end of the war, practical problems in maintaining price and wage controls increased. A bill passed in June 1946 extending the EPCA was vetoed as inadequate by President Truman. For nearly a month markets were free.

A law was then enacted extending the EPCA to June 30, 1947 (60 Stat. 664). The statute provided for ceilings on rents and most prices but with a number of important exceptions. A decontrol board was created by the law, and in the following months many prices were raised and many controls lifted completely. By November 1946 price controls had been removed from all goods and services except sugar, rice and syrups. On November 9, 1946 President Truman issued an order ending wage controls (E.O. No. 9801).

Price Control in the Korean War

In September 1950, Congress passed the Defense Production Act ("DPA") providing power to control prices either selectively or comprehensively (64 Stat. 803). The law required that wages also be controlled if prices were. It barred the imposition of ceilings on farm prices until they should exceed parity or the levels of May 1950, whichever was higher. The Economic Stabilization Agency ("ESA") and a Wage Stabilization Board were set up immediately, and an Office of Price Stabilization in January 1951.

ESA began with informal methods, but in December 1950 it issued a compulsory price regulation on automobiles.

On January 26, 1951 ESA issued a general wage-price freeze, although increases were permitted for agriculture through operation of parity and for labor through operation of escalator clauses in union contracts.

An amendment to the DPA in 1951 required that producers' ceilings be raised to cover all past increases in production costs, together with the same percentage mark-ups over cost that existed before Korea (65 Stat. 135-36). The OPS began suspending certain regulations in the spring of 1952, and the stabilization machinery was liquidated in the spring of 1953.*/

III. Limitations on § 5(b) as Potential Price Control Authority

None of the various actions taken before Pearl Harbor by the Administration in the price control area relied upon or referred to § 5(b) of the Trading with the Enemy Act. President Roosevelt of course was eminently familiar with the potential of § 5(b), and Executive Order No. 8843, controlling consumer credit under § 5(b), was issued in

*/ The original DPA provided for price and wage controls from September 1950 to June 30, 1951 (64 Stat. 822). On June 30, 1951 it was extended for one month (65 Stat. 110). Controls were extended on July 31, 1951, to June 30, 1952 (65 Stat. 144), and on the latter date to April 30, 1953. (66 Stat. 306).

August 1941 while hearings were under way on the bill which became the EPCA.

In 1942, prior to enactment of the Stabilization Act, use of § 5(b) to control wage levels and agricultural prices was considered. At that time the EPCA did not provide for wage controls and its effect on agricultural prices was expressly limited. A Treasury Department memorandum, dated July 24, 1942, noted that American businesses could be controlled under a licensing system, in the same way that foreign-owned enterprises were then controlled under § 5(b), particularly where the purpose of the control would be to help stabilize the dollar and protect the banking and credit structure of the economy. Without passing on the policy and political considerations involved, the memorandum concluded that under § 5(b) businesses could be licensed to use banking institutions on condition that their wages not exceed prescribed ceilings.

With respect to agricultural prices, the limitations on controls were set forth in § 3 of the EPCA, which included this provision:

> "No provision of this Act or any existing law shall be construed to authorize any action contrary to the provisions and purposes of this section."

The memorandum nevertheless suggested that § 5(b) could be utilized in this area also, by providing that banking institutions be prohibited from lending money on agricultural commodities unless they were to be sold at controlled prices.

There is no indication that these suggestions were accepted.

The Moore Amendment

As noted above, in June 1946 President Truman vetoed a bill which extended price controls because he considered it inadequate. In apparent anticipation of the President's veto, a late amendment was made to a bill extending various powers under the Second War Powers Act. This amendment was introduced by Senator Moore immediately prior to Senate passage of the bill (which had already been passed by the House). It provides (60 Stat. 346):

> "Nothing contained in this Act or any other Federal Act (except the Emergency Price Control Act of 1942, as amended, the Stabilization Act of 1942, as amended, or the District of Columbia Emergency Rent Act, approved December 2, 1941, as amended), shall be construed to authorize the establishment by any officer or agency of the Government of maximum prices for any commodity or maximum rents for any housing accommodations." */

*/ It appears from the meager legislative history of the Moore Amendment that its reference to prices of "any commodity" is not limited to agricultural commodities, but

(Fn. cont'd. p. 12)

(It should be noted that the Moore Amendment does not refer to or affect control of wages.)

Most titles of the Second War Powers Act expired or were repealed by June 30, 1950, but the Moore Amendment had no express expiration date and was never repealed. It still appears in the United States Code at 50 U.S.C. App. 645b.

During the Korean emergency Congress included specific price control authority in Title IV of the DPA. Since the Moore Amendment states only that no Federal act should be "construed" to authorize price or rent controls, it presumably was not intended to preclude a specific Congressional grant of power in this field. Thus enactment of the DPA, not being inconsistent with the Moore Amendment, cannot be said to have repealed or affected it by implication.*/

*/(Fn. cont'd) includes the full range of goods and services included in the EPCA's broad definition of "commodity." See 92 Cong. Rec. 7312, 7872, 7926; H.R. Conf. Rep. No. 2395, 79th Cong., 2d Sess. (1946).

*/ On the other hand, the amendment expressly provided exceptions for three pre-existing statutes which conferred express control powers. (The exception for the District of Columbia rent control law, whose extension had been voted only a short time before, was added in conference. H.R. Conf. Rep. No. 2395.) It might therefore be argued that the failure of Congress to add a further exception to the Moore Amendment when it enacted the price control provisions of the DPA shows that by 1950 Congress no longer viewed the amendment as being in force.

It appears that Congress can validly enact declaratory statutes directing how former acts granting powers to the Executive shall be construed with respect to subsequent Executive actions. Cf. United States v. Claflin, 97 U.S. 546, 549.

The question remains, assuming validity of the Moore Amendment as well as its continued existence in permanent law, as to its meaning in relation to § 5(b).

Congress appears to have intended by the amendment to reserve to itself the right to reinstitute a comprehensive system of price and rent controls, such as had existed during the Second World War and was being given a limited post-War extension at the time the amendment was enacted. Such action by Congress may be contrasted with its express recognition of the continued power of the President to implement credit controls under § 5(b) in a time of emergency, set forth in the joint resolution of 1947. 61 Stat. 921, 12 U.S.C. 249.

On the other hand, it may be argued that Congress did not intend to preclude resort to such general emergency legislation as § 5(b) for all time in this briefly considered provision. This argument would be premised on the fact that the apparent intent of Congress in enacting the Moore Amendment was to forestall an anticipated veto by barring President Truman from being able to use general powers in the post-War period as an alternative to the explicit price control legislation he intended to veto.

Whether Congress or the courts would accept this argument, despite the flat language of the statute, could depend on the factual context in which it is raised. Obviously the argument could be more persuasive in a serious emergency. Moreover, the comprehensiveness of the proposed controls and the severity of the sanctions imposed for violation could also be significant.

Under the best of circumstances, however, it should be recognized that the Moore Amendment presents a substantial obstacle to use of § 5(b) for imposing a comprehensive system of price controls.

September 28, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Authority to Limit Fund Outflow and Impose Interest Ceilings Under the Trading with the Enemy Act

The following summarizes the Justice Department's memo of September 27, 1966, on the above subject.

1. Subject to considerations of U. S. treaty obligations such as the International Monetary Fund Agreement, the Trading with the Enemy Act authorizes executive control over capital outflow from the United States

* President Roosevelt used the Act to control capital outflow in 1933-34 and just prior to World War II

* The Act now serves as the authority for Treasury regulations blocking trade and financial transactions with North Korea, Cuba, North Vietnam and Communist China

* The broad language of the Act, its prior executive use to control capital outflow, congressional ratification of these executive controls, and court decisions, uphold the President's authority in the capital outflow area

* Treasury is preparing a formal legal opinion on the question of the impact of international agreements on the right to invoke capital outflow control.

2. The Trading with the Enemy Act also appears to authorize the imposition of interest rate ceilings

* Although the Act has never been used for this purpose in the past, Justice believes that the language of the Act, which gives the President broad control over the banking system, supports the authority

* Justice also feels that some support for interest rate controls can be found by analogy to the executive actions taken to control consumer credit

* The statutory power probably permits extension of interest rate ceilings to lenders other than regular licensed banking institutions.

3. It would not be necessary to declare a new national emergency in order to invoke the powers of the Act. The emergency declared by President Truman in 1950, and thereafter confirmed by Presidents Eisenhower and Kennedy, will evidently suffice.

4. Justice makes the point that Congressional confirmation or approval has generally been given to executive actions taken under the Trading with the Enemy Act in the economic control area. They express the view that this history suggests that it would be desirable to obtain Congressional approval following the issuance of an Executive Order establishing economic controls.

JERobson/rg

September 28, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Authority to Limit Fund Outflow and Impose Interest Ceilings Under the Trading with the Enemy Act

The following summarizes the Justice Department's memo of September 27, 1966, on the above subject.

1. Subject to considerations of U. S. treaty obligations such as the International Monetary Fund Agreement, the Trading with the Enemy Act authorizes executive control over capital outflow from the United States

   * President Roosevelt used the Act to control capital outflow in 1933-34 and just prior to World War II

   * The Act now serves as the authority for Treasury regulations blocking trade and financial transactions with North Korea, Cuba, North Vietnam and Communist China

   * The broad language of the Act, its prior executive use to control capital outflow, congressional ratification of these executive controls, and court decisions, uphold the President's authority in the capital outflow area

   * Treasury is preparing a formal legal opinion on the question of the impact of international agreements on the right to invoke capital outflow control.

2. The Trading with the Enemy Act also appears to authorize the imposition of interest rate ceilings

   * Although the Act has never been used for this purpose in the past, Justice believes that the language of the Act, which gives the President broad control over the banking system, supports the authority

   * Justice also feels that some support for interest rate controls can be found by analogy to the executive actions taken to control consumer credit

* The statutory power probably permits extension of interest rate ceilings to lenders other than regular licensed banking institutions.

3. It would not be necessary to declare a new national emergency in order to invoke the powers of the Act. The emergency declared by President Truman in 1950, and thereafter confirmed by Presidents Eisenhower and Kennedy, will evidently suffice.

4. Justice makes the point that Congressional confirmation or approval has generally been given to executive actions taken under the Trading with the Enemy Act in the economic control area. They express the view that this history suggests that it would be desirable to obtain Congressional approval following the issuance of an Executive Order establishing economic controls.

JERobson/rg

DRAFT

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM: John E. Robson

SUBJECT: Authority to Limit Fund Outflow and Impose Interest Ceilings Under the Trading with the Enemy Act

The following summarizes the Justice Department's memo of September 27, 1966, on the above subject.

1. Subject to considerations of U. S. treaty obligations such as the International Monetary Fund Agreement, the Trading with the Enemy Act authorizes executive control over capital outflow from the United States.

* President Roosevelt used the Act to control capital outflow ~~transactions~~ in 1933-34 and just prior to ~~U. S. entry into~~ World War II

* The Act now serves as the authority for ~~present~~ Treasury regulations blocking trade and financial transactions with North Korea, Cuba, North Vietnam and Communist China

* The broad language of the Act, ~~is~~ ~~the precedent established by~~ its prior executive use ~~for~~ to control capital outflow, ~~transactions,~~ congressional ratification of these executive controls, and court decisions, uphold the President's authority in the capital outflow area

* Treasury is preparing a formal legal opinion on the question of the impact of international agreements on the right to invoke capital outflow control. ~~On the basis of my preliminary discussions with Treasury :~~

. ~~Certain kinds of exchange prohibitions can result in a~~

determination by the International Monetary Fund that the U. S. is not satisfying its obligations of exchange stability

. Generally, limitations on true capital transactions such as setting up foreign businesses or making long-term loans abroad can be imposed. Difficulties may arise in restrictions which affect payments made in foreign trade, short-term loans and limitations on amounts U. S. tourists can take or spend abroad.

2. The Trading with the Enemy Act also ~~would~~ appears to authorize the imposition of interest rate ceilings.

* Although the Act has never been used for this purpose in the past, Justice believes that the ~~broad~~ language of the Act, which ~~appears to~~ gives the President broad ~~wide~~ control over the banking system, supports ~~provides~~ the authority

* Justice also feels that some support for interest rate controls can be found by analogy to the executive actions taken to control consumer credit

* The statutory power ~~given the President to define world banking institutions~~ probably permits extension of interest rates ceilings to lenders other than regular licensed banking institutions.

3. It would not be necessary to declare a new national emergency in order to invoke the powers of the Act. The emergency declared by President

Truman in 1950, and thereafter confirmed by Presidents Eisenhower and Kennedy, will evidently suffice.

4. Justice ~~points out~~ makes the point that Congressional ~~ratification~~ confirmation or ~~advance~~ approval has generally been given to ~~of~~ executive actions taken under the Trading with the Enemy Act ~~have~~ in the economic control area. They express the view that this history ~~generally been given and~~ suggests that it would be desirable to obtain ~~such~~ Congressional approval following the issuance of an Executive Order establishing ~~[illegible]~~ economic controls.

JERobson/rg
9/28/66

Assistant Attorney General

Department of Justice
Washington

SEP 27 1965

The President,

The White House.

My dear Mr. President:

Enclosed is a memorandum discussing the legal basis for use of Section 5(b) of the Trading with the Enemy Act as authority for executive action to control (1) capital outflow from the United States, and (2) interest rates charged to borrowers.

It is our conclusion that Section 5(b) provides a legal basis for both types of control. The following points, however, should be noted:

1. Specific controls over capital outflow should be so designed as to avoid conflict with treaty obligations such as those of the International Monetary Fund Agreement. We understand from the Department of the Treasury that the latter agreement would probably be violated by restrictions

on current foreign trade payments, but not by controls over capital outflow for investment purposes.

2. Interest rates charged to borrowers have never been subjected to control under Section 5(b), traditionally having been left to the indirect measures of the Federal Reserve System. Direct control of such rates would be an innovation, but may be supported by analogy to the consumer credit controls previously imposed under Section 5(b).

3. Historically, the use of Section 5(b) for economic controls reveals such a complicated interplay of Executive and congressional action that in our view it would be desirable to obtain the approval and confirmation of Congress following issuance of any Executive order establishing such controls.

Respectfully,

Frank M. Wozencraft

Frank M. Wozencraft
Assistant Attorney General
Office of Legal Counsel

Legal authority under § 5(b) of the Trading with the Enemy Act to control capital outflow and interest rates.

This memorandum deals with the legal authority of the President under § 5(b) of the Trading with the Enemy Act, in a period of national emergency, to impose controls over (1) capital outflow from the United States, and (2) interest rates charged to borrowers. Our basic conclusions are:

Controls of capital outflow from the United States to other countries seem clearly authorized by the language of § 5(b). They have precedent in President Roosevelt's actions during the 1933 banking emergency.

Controls over interest rates charged to borrowers have never been imposed under the authority of this section, but the statutory language seems broad enough to authorize such controls. Moreover, they may be supported by analogy to the consumer credit controls imposed shortly before World War II and thereafter.

* The statutory requirement of a period of emergency is satisfied by the national emergency declared in President Truman's proclamation of December 16, 1950, which is still in effect.

I.

Summary

Capital outflow. Controls over the movement from this country of currency, credit, foreign exchange or other assets ("capital outflow") were imposed by President Roosevelt in two different contexts under authority of § 5(b). In the economic emergency he faced upon coming into office, President Roosevelt used § 5(b) powers to control capital outflow transactions in 1933-34. Later, during the spread of Axis domination prior to our entrance into World War II, he used the same authority to impose capital outflow restrictions with respect to successive countries invaded by or subject to the influence of the Axis. Congress gave subsequent approval to all these various actions.

*The authority of § 5(b) is the basis for the present outstanding prohibitions on the transfer of funds and trade with certain Communist-controlled areas.

Interest rates. Prior to World War II, in the post-War period and in the Korean hostilities, consumer credit controls were imposed under authority of § 5(b), with the approval of Congress given either after or before the various impositions. Such controls set various limitations on the terms of credit transactions, but at no time did they include maximum interest rates chargeable to borrowers. However, the language of § 5(b) would appear to support regulation of interest rates charged to borrowers, as well as those aspects of credit previously dealt with.

<u>1966 congressional proposal</u>. In the spring of 1966, the House Banking Committee proposed to write into the Defense Production Act specific stand-by authority for Presidential imposition of consumer credit controls. Statements made in discussing the proposal, which ultimately was defeated on the floor of the House, apparently proceeded on the assumption that no such authority presently existed. There was no real consideration of § 5(b), and the views expressed should have little or no legal significance.

<u>National emergency</u>. As a legal matter, the emergency proclaimed by President Truman in December 1950 continues in effect, and satisfies the requirement that § 5(b) may be invoked only "During the time of war or during any other period of national emergency declared by the President . . . ."

II.

Language of § 5(b)

Section 5(b) now provides in relevant part (12 U.S.C. 95a; 50 U.S.C. App. 5(b)):

> "During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise--
>
> "(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and
>
> "(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,
>
> by any person, or with respect to any property, subject to the jurisdiction of the United States . . . ."

Section 5(b)(3) further confers upon the President the power "to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision [§ 5(b)], for any or all of the terms used in this subdivision."

The quoted language is not restricted to "trading with the enemy." It specifically authorizes regulation of capital outflow transactions in its references to the export of gold, currency and securities, transactions in foreign exchange, transfers of credit and payments by banking institutions. While the language does not specifically refer to interest rates, the setting of such rates for the borrowing of money would appear to be within the broad power over banking transactions conferred by the section. Although part of the section speaks in terms of "banking institutions," that term has been broadly defined in Executive orders and regulations issued under it to cover anyone engaged in the capital outflow or credit transactions being regulated.

III.

History of Use of § 5(b) for Economic Controls

The Trading with the Enemy Act (40 Stat. 411) was originally passed in 1917 to control commercial intercourse with countries with which the United States was then at war. Section 5(b) in its original form gave the President power to regulate such matters as transactions in foreign exchange, the export and hoarding of gold and transfers of credit in any form, but it contained an exception for credits relating solely to transactions to be executed wholly within the United States.

The 1933 banking emergency. Upon taking office on March 4, 1933, President Roosevelt moved promptly to deal with the nation-wide panic that threatened to drain the liquid resources of most of the banks in the country. He invoked the provisions of § 5(b) to declare a bank holiday. The President noted that there had been heavy withdrawals of gold and currency from the nation's banking institutions for the purpose of hoarding, and that increasing speculation abroad in foreign exchange had resulted in a severe drain on domestic gold supplies. See Proclamation No. 2039, March 6, 1933.

When Congress convened on March 9, 1933, it "approved and confirmed" the actions taken by the President since his inauguration pursuant to § 5(b). 48 Stat. 1, 12 U.S.C. 95b, 50 U.S.C. App. 5, note. Congress also amended § 5(b) to authorize the President expressly to regulate "transfers of credit between or payments by banking institutions as defined by the President", and deleted the exclusion of purely domestic transactions.

The debate accompanying passage of the 1933 statute makes it clear that the President's power under § 5(b) is exceptionally broad. Those supporting the statute made such remarks as:

> "It is complete control over the banking system in the United States." (Rep. McFadden, 77 Cong. Rec. 80).

> "I realize that in time of peace we have perhaps never been called upon to vest such transcendent powers in the Executive as are provided for in this bill. . . . It is an emergency which can be adequately dealt with only by the strong arm of Executive power, and therefore I expect to vote for the bill, though it contains grants of powers which I never before thought I would approve in time of peace." (Sen. Connally, 77 Cong. Rec. 65).

On March 10, 1933, pursuant to the newly enacted statute, the President issued an order which prohibited the removal from the United States of "any gold coin, gold bullion, or gold certificates," except as licensed by the Secretary of the Treasury. The order also prohibited all transactions in foreign exchange except those undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of prior contracts. E.O. No. 6073.

During that year a series of other orders were issued concerning gold. Acting under § 5(b), the President prohibited the hoarding of gold and directed that all gold bullion certificates be deposited with the Federal Reserve Banks. E.O. No. 6102.

On January 15, 1934, another executive order (E.O. No. 6560) was issued which covered export or withdrawal of currency and coin from the United States, subject to the same general exceptions as were contained in Executive Order No. 6073 of March 10, 1933. .

On January 30, 1934, Congress again ratified all actions taken under § 5(b). 48 Stat. 343, 12 U.S.C. 213. The validity of the President's actions under § 5(b) was subsequently upheld by the courts. E.g., _Smith_ v. _Witherow_, 102 F.2d 638, 641 (C.A. 3,1939); _Ruffino_ v. _United States_, 114 F.2d 696 (C.A. 9, 1940).

Foreign assets controls. Immediately following the invasion of Norway and Denmark by Germany in April 1940, the President acted to protect assets in the United States of these countries or their nationals by issuing an order freezing such assets. E.O. No. 8389. The order prohibited, except as authorized by the Secretary of the Treasury, payments by banking institutions, transactions in foreign exchange and the export of coin or currency, as such transactions related to property in which the blocked countries or their nationals had an interest. The term "banking institution" was broadly defined in this order to include any person holding credits for others as a direct or incidental part of his business. A month later Congress passed a joint resolution approving and confirming the Executive Order, and making technical amendments in § 5(b). 54 Stat. 179.

In 1949 the Supreme Court upheld "the President's wide power to define 'banking institution'" under § 5(b), stating that "The power in peace and in war must be given generous scope to accomplish its purpose." Propper v. Clark, 337 U.S. 472, 481 (1949).

Consumer credit controls. Four months before the United States entered World War II, President Roosevelt issued Executive Order No. 8843, which directed the Federal Reserve Board to impose controls on consumer installment credit. The order recited that it was issued by virtue of the authority vested in the President by § 5(b), "in order . . . to promote the national defense and protect the national economy . . . ." "Banking institution" was defined in the order to include vendors of consumer durable goods.

Promptly after promulgation of this order, the Federal Reserve Board issued Regulation W, providing detailed rules limiting installment credit transactions in such aspects as down payments, duration of credit and frequency of installments. Interest rates, however, were not regulated.

The First War Powers Act, passed in December 1941, approved and ratified actions taken pursuant to the Trading with the Enemy Act, and broadened the relevant language of § 5(b) to read as it does today. 55 Stat. 839.

In 1942 Regulation W was extended to certain single payment loans and purchases with a single-payment deferred price. 7 F.R. 3353.

After World War II, Congress acted to give prior authorization on two occasions for the reimposition by the Federal Reserve Board of consumer credit controls. It is our conclusion, however, that the actions of Congress since the War have left untouched the basic power of the President under § 5(b) to deal with the subject. Four actions by Congress should be considered in this connection:

(1) Congress passed a joint resolution in 1947 which provided that after November 1, 1947, the Federal Reserve Board was not to exercise consumer credit controls pursuant to Executive Order No. 8843. 61 Stat. 921, 12 U.S.C. 249. The joint resolution provided, however, that "such consumer credit controls" could be exercised during wartime or any national emergency thereafter declared by the President.

(2) In the following year, Congress reversed its field, and authorized the Federal Reserve Board, "notwithstanding" the 1947 joint resolution, to exercise "consumer credit controls in accordance with and to carry out the

purposes of" Executive Order No. 8843, but limited to installment credit. This was done "to protect the Nation's monetary, banking, and credit structure, and interstate and foreign commerce, against increased inflationary pressures." 62 Stat. 1291.

This authority expired June 30, 1949. The legislative history of the 1948 act, however, evidences Congressional intent that the President would retain his authority under § 5(b) to exercise consumer credit controls thereafter during time of war or national emergency. See, e.g., H.R. Rep. No. 2455, 80th Cong., 2d Sess. 5-6 (1948).

(3) In § 601 of the Defense Production Act of 1950, using language patterned closely on that of the 1948 enactment, Congress again gave the Federal Reserve Board authority to exercise consumer credit controls under Executive Order No. 8843 "notwithstanding" the 1947 joint resolution. 64 Stat. 812.

The Act also contained a separate provision, § 602, which authorized controls on real estate construction credit. 64 Stat. 813.

(4) In June 1952, while extending other parts of the Act, including § 602, Congress repealed § 601. 66 Stat. 305. The technical legal effect of repealing § 601 was immediately to restore the provisions of the 1947 joint resolution authorizing the President to impose consumer credit controls again during a war or a period of national emergency declared by him. (A declaration of emergency, discussed below, had been issued on December 16, 1950.) However, the intent of Congress in 1952 clearly was to end consumer credit controls at that time in the light of the economic situation then existing. In substance, this analysis was given to the Office of Defense Mobilization by the Department of Justice in March 1953. In a letter signed by Assistant Attorney General J. Lee Rankin, and an accompanying office memorandum, the technical legal effect of the repealer was recognized, but it was concluded that presidential authority to reinstate consumer credit controls did not exist at that time in light of the intent of Congress in terminating controls.

Such a conclusion with respect to a time barely nine months after Congress had repealed § 601 seems supportable. Neither the legislative history of the 1952 repealer nor the Rankin advice, however, suggest that Congress intended the repeal to have a permanent effect upon the powers conferred on the President by § 5(b) of the Trading with the Enemy Act, or upon the force of the 1947 joint resolution for the future.

In summary, the four post-War actions of Congress outlined above would appear to leave the President's power under § 5(b) to control consumer credit where it was following the 1947 joint resolution. Moreover, it should be noted that this series of congressional actions have no relevance to the use of § 5(b) to control other subjects, and thus have no effect whatever upon the power under § 5(b) to control capital outflow. Indeed, § 5(b) has continued to be used since the Korean hostilities as the basis for the Treasury regulations blocking trade and financial transactions with North Korea, mainland China, Cuba and North Vietnam.

*

IV.

1966 Congressional Proposal for Credit Control Authority

Mention should be made of a proposal in 1966, initiated in the House Banking Committee, to enact legislation specifically authorizing the President to impose consumer credit controls. The proposal, which was rejected by the House, contemplated insertion of a new § 601 in the Defense Production Act to provide specific language giving stand-by authority to the President, without reference to Executive Order No. 8843. During the hearing on extension of the Defense Production Act before the House Committee on Banking and Currency, the Director of the Office of Emergency Planning was asked for his views on this proposal. In a letter dated March 30, 1966, he replied:

> "I have some questions whether selective controls over consumer credit are appropriate to the current economic situation. . . . These comments do not necessarily imply that it would be undesirable for the President to have standby authority, if Congress wished to place it in his hands, which would enable him to institute such controls if and when they became appropriate. The President has not requested such authority, and I am not proposing it here." Extension of the Defense Production Act of 1950, Hearing before the House Committee on Banking and Currency, 89th Cong., 2d Sess. 20 (1966).

The Committee reported out the proposal as an amendment to the extension bill. H.R. Rep. No. 1411, 89th Cong., 2d Sess. 3-6, 12-13 (1966). The amendment was debated in the House and rejected by a large majority. 112 Cong. Rec. 12727-46 (June 16, 1966, daily ed.).

There was no suggestion during the hearings or the debate that the President might already possess the power to control credit, and it appears to have been assumed that he did not have this power. However, there was no considered discussion of the state of existing law. Consequently, the statements made by individuals during the consideration of the amendment would seem to have little or no legal significance in determining the scope of § 5(b) and the present status of the 1947 joint resolution. Cf. United States v. Philadelphia National Bank, 374 U.S. 321, 348-49 (1963); S.E.C. v. Capital Gains Research Bureau, 375 U.S. 180, 200 (1963). Moreover, whatever the significance of the consideration of the 1966 proposal insofar as credit controls are concerned, it could have no effect on the continued force of § 5(b) as authority for controls over different subjects, such as capital outflow.

V.

Existence of a National Emergency

As noted earlier, § 5(b) can be used during time of war or any other period of national emergency declared by the President. On December 16, 1950, while the World War II emergency was still in existence, President Truman issued a proclamation of the existence of a national emergency (Proc. No. 2914). The proclamation begins with the recital that "recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict." Subsequent language in the proclamation is broader, referring to "the menace of the forces of communist aggression."

Continuance of the national emergency declared by the 1950 proclamation has been explicitly reaffirmed by Presidents Eisenhower and Kennedy, and the courts have recognized its continued existence as recently as 1965. Pike v. United States, 340 F. 2d 487 (C.A. 9, 1965).

It therefore should not be necessary for the President to declare a new emergency in order to utilize his powers under § 5(b).

August 25, 1966

MEMORANDUM TO MR. JOSEPH A. CALIFANO, JR.

FROM John Robson

SUBJECT: Presidential Authorities

1. Attached is an interim memo I received from Justice last night. It's fairly broad and was given to me on the understanding that, in view of the time request, it would serve only as an interim survey pending completion of the more comprehensive review.

2. Briefly summarized, the memo:

   - confirms the President's authority to impose consumer credit controls under the "Trading With The Enemy Act";

   - confirms the President's authority to enter voluntary agreements or pledges with private business designed to stabilize prices;

   - upholds the President's power to withhold expenditures of appropriated funds within certain broad limits (the limits are not defined);

   - reviews certain powers of the President which bear indirectly on price or wage levels (for example, import and export controls, stockpile releases, federal procurement, etc.).

3. Since this is an interim memo which only outlines some of the areas, I recommend that transmission to the President await the more complete review which I am advised will be in my hands early next week.

Attachment

JER/rg

August 25, 1966

MEMORANDUM TO MR. JOSEPH A. CALIFANO, JR.

FROM John Robson

SUBJECT: Presidential Authorities

1. Attached is an interim memo I received from Justice last night. It's fairly broad and was given to me on the understanding that, in view of the time request, it would serve only as an interim survey pending completion of the more comprehensive review.

2. Briefly summarized, the memo:

   - confirms the President's authority to impose consumer credit controls under the "Trading With The Enemy Act";

   - confirms the President's authority to enter voluntary agreements or pledges with private business designed to stabilize prices;

   - upholds the President's power to withhold expenditures of appropriated funds within certain broad limits (the limits are not defined);

   - reviews certain powers of the President which bear indirectly on price or wage levels (for example, import and export controls, stockpile releases, federal procurement, etc.).

3. Since this is an interim memo which only outlines some of the areas, I recommend that transmission to the President await the more complete review which I am advised will be in my hands early next week.

Attachment

JER/rg

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. John Robson
Bureau of the Budget

DATE: August 24, 1966

FROM : Martin F. Richman, First Assistant
Office of Legal Counsel
Department of Justice

wfr

SUBJECT:

Enclosed, pursuant to your request, is a brief memorandum touching upon certain areas of legal authority available to the President to aid in the emergency stabilization of prices, wages and credit. A fuller treatment will follow as soon as we can make a more comprehensive review of the general statutes which may bear on the problem.

Enclosure

MEMORANDUM

Re: Legal authority available to the President to aid in the emergency stabilization of prices, wages and credit.

This statement, prepared on an urgent basis, describes certain legal powers available to the President to aid in the emergency stabilization of prices, wages, and credit. There are a number of other complicated statutes relating to such matters as banks and banking, agricultural stabilization, labor-management, etc., the effectiveness of which is not contingent upon the existence of a state of national emergency or war, which we have not had sufficient time to analyze.

We are now reviewing those statutes and will provide a supplemental statement as quickly as possible.

1. Consumer Credit Restrictions.

Section 5(b) of the Trading with the Enemy Act

(50 U.S.C. App. 5(b)) authorizes the President, during a national emergency proclaimed by him, to "investigate, regulate, or prohibit, transfers of credit or payments between, by, through or to, any banking institution."

Pursuant to that authority, the Federal Reserve Board was directed to impose consumer credit controls during World War II (Executive Order No. 8843 of August 9, 1941). That directive, with certain interruptions imposed by Joint Resolutions, was in effect until May 7, 1952.

The President is empowered to exercise that authority anew at the present time since the state of national emergency proclaimed by President Truman on December 16, 1950 (Proclamation No. 2914) is still in effect. If he elects to do so, it is advisable that he issue a new Executive order, along the lines of Executive Order No. 8843, designating the agency (or agencies) to perform the functions involved, delegating authority, and prescribing general standards for the performance of those functions.

2. Voluntary Agreements.

Although the provisions of Section 708 of the Defense Production Act no longer provide authority for voluntary agreements between the President and private businesses designed to stabilize prices, such agreements may be negotiated by the President pursuant to the constitutional authority vested in him as the Chief Executive.

3. Imports.

It might be possible to increase imports into this country of articles with respect to which prices shall have increased too steeply.

For example, by Proclamation No. 3709 of March 31, 1966, the President took emergency action pursuant to Section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to increase the amount of cheddar cheese that could be imported into the United States during the remainder of the quota year ending June 30, 1966.

During a recent crisis involving a shortage of plywood for home construction, it was discovered that Japan had voluntarily restricted exports of plywood to the United States at the behest of our Government. If voluntary arrangements of this type exist as to other scarce or unreasonably priced articles, it might be possible to get the countries involved to suspend those voluntary restrictions.

If petroleum prices become exorbitant, the President can revise the import quotas imposed by Proclamation No. 3279, as amended.

4. Exports.

The Export Control Act (50 U.S.C. App. 2022) authorizes the use of export controls to, among other things, protect the domestic economy from excessive drain of scarce materials and to reduce inflationary impact of abnormal foreign demand.

Pursuant to this authority, restrictions have been placed on exports of copper and certain classes of hides.

5. Stockpiles.

Releases of materials from the National Stockpile pursuant to Section 5 of the Strategic and Critical Materials Stockpiling Act (50 U.S.C. 98d) or sales from that stockpile pursuant to Section 3(e) of that Act (50 U.S.C. 98b(e)) might serve as a restraint on inflationary prices. The prices of copper and aluminum have been held in check by this means.

The same is true with respect to the Supplemental Stockpile (Section 416(2) of the Agricultural Act of 1949 (7 U.S.C. 1431)), and the Defense Production Act Inventory (50 U.S.C. App. 2093(a)).

6. Wage Disputes.

The services of the National Mediation Board (45 U.S.C. 154), and Emergency Boards (45 U.S.C. 160) may be utilized in the effort to stabilize wages with respect to rail and air carriers.

The services of the Labor Department and the Federal Mediation and Conciliation Service (29 U.S.C. 172) may be used in other national labor disputes.

In addition, the President may, under his authority as Chief Executive, create special bodies to investigate or conciliate disputes.

7. Procurement And Construction Contracts.

The President may require that Federal procurement and construction contracts contain a provision restricting the amount by which wages may be increased with respect to persons performing employment in connection with those contracts. This would probably necessitate a suspension of the Walsh-Healey and Davis-Bacon Acts (41 U.S.C. 35-45 and

40 U.S.C. 276a, respectively), except to the extent such action would represent an exercise of the authority (limited to defense contracts) conferred by the Act of August 28, 1958 (50 U.S.C. 1431).

This would be somewhat comparable to the program which has been instituted with respect to Wage Board employees.

8. Curtailment of Federal Expenditure.

The President is, within certain broad limits, authorized to withhold expenditures of appropriated funds. This possibility was mentioned by the President at the signing of the N.A.S.A. Authorization Act, 1967 (*Weekly Compilation of Presidential Documents*, August 8, 1966, p. 1027).

9. Antitrust And Related Laws.

Neither the antitrust laws, the Federal Trade Commission Act, nor the comparable provisions of our agricultural laws provide significant promise of producing results in the immediate effort to stabilize prices. These statutes are designed to achieve long-range results based upon intensive investigations and involved legal proceedings.

September 20, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Authority to Limit Fund Outflow Under the Trading With The Enemy Act

1. I have reviewed with Justice and Counsel for the Treasury the President's inquiry concerning the use of the Trading With the Enemy Act to limit the outflow of money from this country. We conclude:

   * The Act can be used to limit or prohibit capital investment abroad, including the setting up of foreign businesses, purchasing foreign securities or making loans abroad.

   * Authority exists under the Act to limit the amount of money U. S. travellers can take or spend abroad, however, exercise of this authority may raise problems with certain of our international agreements (principally International Monetary Fund) and this question is being researched in detail at the moment.

2. I also believe that, in general, interest rate ceilings could be imposed under the authority of the Trading With The Enemy Act. However, the Act has never been used for this purpose in the past.

3. An excerpt of the relevant portion of the Trading With The Enemy Act is attached.

Attachment

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

September 20, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Authority to Limit Fund Outflow Under the Trading With The Enemy Act

1. I have reviewed with Justice and Counsel for the Treasury the President's inquiry concerning the use of the Trading With the Enemy Act to limit the outflow of money from this country. We conclude:

   * The Act can be used to limit or prohibit capital investment abroad, including the setting up of foreign businesses, purchasing foreign securities or making loans abroad.

   * Authority exists under the Act to limit the amount of money U. S. travellers can take or spend abroad, however, exercise of this authority may raise problems with certain of our international agreements (principally International Monetary Fund) and this question is being researched in detail at the moment.

2. I also believe that, in general, interest rate ceilings could be imposed under the authority of the Trading With The Enemy Act. However, the Act has never been used for this purpose in the past.

3. An excerpt of the relevant portion of the Trading With The Enemy Act is attached.

Attachment

September 20, 1966

MEMORANDUM FOR MR. JOSEPH A. CALIFANO, JR.

FROM : John E. Robson

SUBJECT: Use of Trading With The Enemy Act to Control Lending Programs of Independent Agencies Selling Securities in the Private Market

Though I do not believe that the point has been specifically raised, it would appear to me that the broad powers available under the Trading With The Enemy Act could be used to limit the nature and amounts of financing transactions engaged in by the so-called independent and privately-owned banking institutions such as those under the Farm Administration. This would seem to give us a little more muscle in encouraging minimal financing activities. Perhaps Treasury would want to consider the possibility of this approach.

JER/rg

SMI

SUPER MARKET INSTITUTE, INC.
200 East Ontario Street
Chicago, Illinois 60611
Area Code 312 • 664-4590

November 28, 1966

TO THE MEMBERS OF SUPER MARKET INSTITUTE

Because of recurring rumors that price, wage and rationing controls are imminent, our Legal Counsel, Ginsburg and Feldman, has obtained a statement from Gardner Ackley, Chairman of the Council of Economic Advisors.

Mr. Ackley strongly denies these rumors and characterizes them as "false and silly."

A copy of Mr. Ackley's full statement is attached.

C O P Y

October 20, 1966

Your two recent letters to Mr. James R. Jones on the subject of possible wage, price, and rationing controls have been brought to my attention.

I want to assure you in the strongest possible terms that there are no plans for the imposition of direct controls after the November election, as has been falsely alleged. Indeed, there is nothing in the present or foreseeable economic situation that could justify the imposition of such controls. Even if a substantial and unexpected acceleration of public or private demands in the economy were to occur, a change in Federal fiscal policy would appear to be fully adequate to counter the resulting inflationary pressures. The President has made abundantly and repeatedly clear that he would be prompt to recommend this course, and I am confident that the Congress would follow his recommendations.

Some rumors of impending controls appear to have a purely political inspiration. Others may result quite innocently from the continuing work of the Office of Emergency Planning, which has the responsibility for planning the Government's response to the contingency of nuclear war. This contingency planning has been going on for a number of years. The process of keeping these plans up to date involves communication from time to time with advisory committees in the various Federal agencies and in the business community, State and local governments, and so on. But this has nothing whatsoever to do with the planning of controls for situations of limited war.

I agree fully with you that rumors of impending controls can have a most severe and unfortunate effect on business and consumer behavior. I would greatly appreciate anything you can do to dispel such false and silly rumors.

Sincerely,

/s/ Gardner Ackley

Gardner Ackley

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

November 22, 1966

Dear David:

Attached is a copy of a letter that I wrote recently referring to rumors about the imminent imposition of price controls.

Nothing has changed since the time this letter was written. The rumor must still be characterized as false and silly.

Sincerely,

Gardner

Gardner Ackley

Mr. David Ginsburg
Ginsburg and Feldman
1 Farragut Square
Washington, D. C.