

January 16, 1946

Memorandum to the Board of Directors of Export-Import Bank of Washington:

It is the purpose of this memorandum to consider the functions and powers of the National Advisory Council and of the Advisory Board established by the Export-Import Bank Act of 1945 in relation to the functions and powers of the Board of Directors of the Export-Import Bank of Washington.

The National Advisory Council

The N.A.C. was created and its functions defined by Section 4 of the Bretton Woods Agreements Act. Sub-section (a) of Section 4 creates the Council by the following language:

"Sec. 4 (a) In order to coordinate the policies and operations of the representatives of the United States on the Fund and the Bank and of all agencies of the Government which make or participate in making foreign loans or which engage in foreign financial, exchange or monetary transactions, there is hereby established the National Advisory Council on International Monetary and Financial Problems (hereinafter referred to as the "Council"), consisting of the Secretary of the Treasury, as Chairman, the Secretary of State, the Secretary of Commerce, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Board of Trustees of the Export-Import Bank of Washington."

It should be observed at this point that the word "Bank" as used in the Bretton Woods Act refers only to the International Bank for Reconstruction and Development.

Sub-section (b) (3) of Section 4 provides as follows:

"(3) The Council shall coordinate, by consultation or otherwise, so far as is practicable, the policies and operations of the representatives of the United States on the Fund and the Bank, the Export-Import Bank of Washington and all other agencies of the Government to the extent that they make or participate in the making of foreign loans or engage in foreign financial, exchange or monetary transactions."

Sub-section (c) of Section 4 provides as follows:

"(c) The representatives of the United States on the Fund and the Bank, and the Export-Import Bank of Washington (and all other agencies of the Government to the extent that they make or participate in the making of foreign loans or engage in foreign financial exchange or monetary transactions) shall keep the Council fully informed of their activities and shall provide the Council with such further information or data in their possession as the Council may deem necessary to the appropriate discharge of its responsibilities under this Act."

There are no other references to the Export-Import Bank in the Bretton Woods Agreements Act. With respect to the representatives of the United States on the Fund and the International Bank, however, the N.A.C. is given specific powers and duties. Sub-section (b) (1) provides that the Council shall recommend to the President general policy directives for the guidance of such representatives. Sub-section (b) (2) provides that the Council shall advise and consult with the President and the representatives of the United States on major problems arising in the administration of the Fund and the International Bank. Sub-section (b) (4) provides that whenever, under the Articles of Agreement of the Fund or the Articles of Agreement of the International Bank, the approval, consent or agreement of the United States is required before an act may

be done by the respective institutions, the decision as to whether such approval, consent or agreement shall be given or refused shall be made by the Council under the general direction of the President and that in such cases the representatives of the United States shall not take any action without the prior approval of the Council. Sub-section (b) (5) and (6) provide that the Council shall report to the President and to the Congress with respect to the participation of the United States in the Fund and the International Bank and on the operations and policies of the Fund and the International Bank.

A copy of the Bretton Woods Agreements Act is attached hereto.

The Export-Import Bank

The Export-Import Bank Act of 1945 vests the management of the Bank in a Board of Directors, four members of which are appointed by the President by and with the advice and consent of the Senate. The act provides further in sub-paragraph (f) of Section 3 that the Bank "shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law provide."

The Advisory Board

An Advisory Board is created by sub-section (d) of Section 3, of

the Export-Import Bank Act of 1945, the language of such sub-section being as follows:

"(d) There shall be an Advisory Board consisting of the Chairman of the Export-Import Bank of Washington, who shall serve as Chairman, the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the Board of Governors of the Federal Reserve System, which shall meet at the call of the Chairman. The Advisory Board may make such recommendations to the Board of Directors as it deems advisable, and the Board of Directors shall consult the Advisory Board on major questions of policy."

No other reference to the Advisory Board is made in the Act. A copy of the Export-Import Bank Act of 1945 is attached hereto.

From the foregoing the sphere of authority of the several entities may be determined.

Advisory Functions of Advisory Board and the N.A.C.

It is the function of the N.A.C. to advise and consult with the representatives on the Fund and the International Bank on major problems of administration, to recommend general policy directives for their guidance and to determine their action in certain instances.

The Advisory Board created by the Export-Import Bank Act is authorized to make such recommendations to the Board of Directors as it deems advisable and the Board of Directors is required to consult it on "major questions of policy". The relation between the Advisory Board and the Export-Import Bank is comparable to that between the N.A.C. and the

representatives of the United States on the Fund and the International Bank. Its authority, however, is more restricted since it is limited to consultation and advice. It is not given the power to approve or disapprove specific action or to recommend the issuance of directives as the N.A.C. may do with respect to the representatives on the Fund and the International Bank.

Authority of N.A.C. to Coordinate Policies and Operations
of Export-Import Bank and Other Agencies

In addition to its authority over the policies and operations of the representatives on the Fund and the International Bank, the N.A.C. is authorized "to coordinate the policies and operations" of those representatives and of all agencies of the United States, including Export-Import Bank, which make or participate in the making of foreign loans or engage in foreign financial exchange or monetary transactions.

The use of the term "coordinate", when considered together with the other provisions of the Act, makes it clear that the Congress intended to do no more with respect to the Export-Import Bank than authorize the N.A.C. to harmonize the activities of this Bank with those of similar agencies and to avoid a duplication of effort. The authority granted is a limited one. The term "coordinate" as employed in the Bretton Woods Agreements Act does not carry with it any power of general supervision over the policies and operations of the agencies mentioned. If the word

"coordinate" had been employed by the Congress for the purpose of granting to the N.A.C. general supervisory authority over the policies and operations of the Export-Import Bank then the mere use of the word would have granted similar authority with respect to the representatives of the United States on the Fund and the International Bank. It is evident that the Congress did not so interpret the word since it deemed it necessary to enact six other separate sub-sections in order to grant to the N.A.C. supervisory authority over the representatives on the Fund and the International Bank.

Accordingly, it appears to be the clear intention of the Act that the N.A.C. may properly exercise authority over the policies and operations of the Export-Import Bank only in those instances in which it is necessary so to do in order to coordinate the policies and operations of the Export-Import Bank with those of other agencies and the representatives of the United States on the Fund and the International Bank. To go further would involve an exercise by the N.A.C. of the powers of management vested in the Board of Directors of the Export-Import Bank.

Legislative History of Provisions Discussed

In the interpretation of legislation the remarks of legislators are material only in those cases in which the language employed in the legislation is ambiguous. In referring to discussions in Congress, I do not intend to imply that the language of the Bretton Woods Agreements

Act and the Export-Import Bank Act is ambiguous with respect to the provisions discussed in this memorandum. In view of the fact, however, that the discussion in committee and that on the floor of the Senate between Senator Taft and Senator Murdock, who reported the bill have received considerable attention in connection with the consideration generally of the subject of this memorandum, they are attached hereto. It is my opinion that if such discussions have any probative value they support the conclusion that the Congress understood the legislation in the manner in which it is interpreted in this memorandum.

A handwritten signature in cursive script, reading "Hawthorne Arey".

Hawthorne Arey
General Counsel