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Anglo-American Financial Discussion
Staff Document No. 6
August 16, 1947

Memorandum to NAC Staff Committee

From: Sub-Committee on Commercial Policy

Subject: RELAXATION OF THE PROVISIONS OF SECTION 9

Before any decision is taken to relax the provisions of Section 9, it must be conclusively proved that such action will materially alleviate the British dollar position. If this is proved, it will be necessary to determine the procedure by which this relaxation can best be effected. This paper attempts to indicate in general terms the possible significance of a relaxation of Section 9 and to outline the possible procedures for effecting it.

Possible British Request

There has been no indication of the specific proposals the British intend to make, and it will be necessary to ascertain these in the forthcoming discussions before any conclusive evaluation of the significance of the proposals can be made. The general nature of the probable British proposals is apparent from official statements, however. They want to be free to discriminate in favor of the Dominions* and other countries (Argentina, for example), and possibly to use such discrimination as one means of requiring other countries to discriminate in their favor. There are also indications that recent events and pressure from other countries may be causing the British to move away from acceptance of the general principle of nondiscrimination.

Benefits to the British from Discriminatory Measures

It is difficult to see how any significant benefits will be obtained by the British solely from a relaxation of Section 9. It should be noted first of all that unless there is some relaxation of the sterling convertibility requirement, the benefits in the form of dollar savings which the British will obtain will be negligible. As long as such convertibility obligations remain in force, countries short of dollars would convert the sterling proceeds of their sales to the United Kingdom into dollars. It may also be noted that in the present situation of a seller's market, many countries would refuse to sell to the United Kingdom unless they could be assured of payment in free or convertible sterling. It therefore follows that a relaxation of Section 9 would help the United Kingdom to save dollars only to the extent that countries like Australia, New Zealand and South Africa would voluntarily refrain from converting their net sterling proceeds.

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*The NAC has already decided that Section 9 does not apply to the British colonial dependencies.

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It is not possible to make, in the short time available, an adequate statistical analysis of the the situation to indicate how trade might be diverted by discriminatory measures, but the following considerations indicate some of the limitations which apply:

1. During the period July 1946-March 1947, 36 per cent of U.K. imports from the U.S. consisted of food. Most of this was bought on bulk-purchase arrangements and was presumably obtained from the U.S. because it could not be obtained elsewhere, or could not be obtained as cheaply elsewhere. There are certain types of fruits, however, which might be obtained from other sources at a dollar saving.
2. Another 20 per cent of U.K. imports from the U.S. consisted of tobacco. An increased amount of tobacco might be obtained from Southern Rhodesia if production can be expanded, but this source could not begin to supply the U.K. demand. Moreover, discrimination in favor of Southern Rhodesia is already permitted under the "common quota" principle. Increased amounts of Greek and Turkish tobacco might also substitute for a small part of the U.K. consumption, but this possibility is limited by British "taste" which prefers Virginia leaf. Incidentally, the present supply of American tobacco does not depend on the size of the requirements (which have been reduced somewhat by recent duty increases), but on the fact that British tobacco purchases are limited by a procedure under which the British Government makes dollars available only for the purchase of less than the present British requirements of the U.S. tobacco.
3. Another 6 per cent consisted of raw cotton, all bought through a central government buying agency, and presumably purchased from the U.S. because it could not be obtained elsewhere.
4. Petroleum products accounted for about 10 per cent of U.K. imports from the U.S. Possibly some of these purchases might be diverted by discriminatory arrangements, but in view of the petroleum supply situation such diversion is unlikely to amount to much.
5. The remaining 28 per cent consisted of a wide range of products including wood and timber, metals, machinery and chemicals, which were probably obtainable for the most part only in the U.S. or Canada.

As long as the United Kingdom abides by the convertibility provisions of the Financial Agreement, and as long as the nondiscrimination provisions of the ITO Charter remain the basis of international trade policy, it is not possible to foresee how there will be any really significant benefits to the British from a setting aside of the provisions of Section 9. The privilege of discriminating in favor of non-dollar countries would be important to the United Kingdom only to the extent that (a) the United Kingdom could pay such countries inconvertible sterling or enter into firm commitments for future deliveries of goods;

and

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and (b) it aided the United Kingdom in compelling other countries to discriminate in its favor, through bilateral trade arrangements or otherwise.

Nevertheless, we should be prepared to consider sympathetically whatever specific proposals the British may make. We should insist, however, on conclusive proof that the specific measures which the British would take would in fact result in a substantial saving of dollars. We should therefore request full details of all arrangements or transactions which the British contemplate taking, including the following information.

- (a) Goods involved
- (b) Countries involved
- (c) Types and general terms of arrangements contemplated
- (d) Estimated dollar savings or other benefits

It is understood, of course, that in determining this Government's position, consideration would also be given to the effects of the British proposals on American export interests.

Possible Methods of Meeting the British Request

Proceeding on the assumption that in the course of the discussions we are convinced by the facts presented by the British that some relaxation of the nondiscrimination commitment is necessary, there are a number of methods which might accomplish this result in varying degrees.

1. Liberal Interpretation of Section 9(b). One possible method is the liberal interpretation of the exception for discrimination in favor of countries having war-disrupted economies (Section 9(b)). Indications are, however, that this method would not go as far as the British desire. It would be difficult to extend the definition of countries having war-disrupted economies much beyond that suggested by the NAC Working Committee, that is, countries of Europe, North Africa and the Far East which were under enemy occupation. Furthermore, there is a proviso which limits its application to cases where there is special necessity for the U.K. to assist the other country.

2. "Liberal Attitude" Toward Bulk-Purchase Arrangements. Although the Section 9 commitment does not refer specifically to state trading, the British Government has indicated that it recognizes that bulk-purchasing arrangements are subject to the nondiscrimination rule, and that such arrangements would not conform to the rule unless they involve purchases which are "all things considered, more favorable from the commercial point of view" * than purchases from the U.S.

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* Statement by the British Prime Minister in the House of Commons,
August 6, 1947.

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There is considerable scope for interpretation in such cases, however, and it might be possible to give the British some leeway without contravening Section 9. At any rate any specific proposals for contracts of a short-term nature which the British may make could be considered with this possibility in mind.

3. Modification of Section 9. The most direct method for making discrimination permissible would be by the formal modification of Section 9. The most logical modification would be to replace the existing commitment with one conforming in general to the new article on discrimination agreed for inclusion in the ITO Charter. Such modification would, however, require the consent of Congress and hence would involve considerable delay. However, it has been suggested by the U.S. Delegation at the Geneva Conference that this Government could agree to offer not to invoke the rule against discrimination in Section 9 pending action by the Congress on the Charter, with the understanding that, upon coming into effect, the more flexible provisions of the Charter supersede the provisions of Section 9. (These provisions, incidentally, already represent a substantial concession to the British point of view. One argument in justification for such action would be that the Financial Agreement itself (Section 8 (iii)) contemplates that the provisions of Section 9 are "in anticipation of more comprehensive arrangements by multilateral agreement". Before such an offer could be made, it would however be necessary to consult and obtain the agreement of Congressional leaders.

There are precedents for this procedure and it is believed that the much-publicized British crisis and its international political implications would justify, in the public mind, this emergency action. It should also be emphasized that this procedure (assuming, of course, we are convinced of its necessity) is probably the only one by which we can give the British the relief they desire in time to afford them any significant assistance in the present crisis.

Conditions of Such a Concession

In view of the political difficulties and dangers which may be involved in making such a concession, however, it will be necessary that this Government be able to demonstrate to Congress and the public that it has agreed to this course of action only as a temporary, emergency measure, and that in return for the concession we have obtained from the British long-run commitments which hold forth a firm promise to return to nondiscrimination and multilateral trading as soon as conditions permit. These commitments can best be obtained by the successful conclusion of the Geneva negotiations. The U.S. Delegation at Geneva considers that satisfactory British action on the following points must be the quid pro quo for any such concession on our part and as evidence of their good faith and good intentions.

(1) Fulfillment

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(1) Fulfillment of the previous British commitment to eliminate preferences of material importance to the U.S. in the U.K., the Dominions and the Colonies;

(2) Support for the U.S. position with respect to outstanding points in the Charter;

(3) Signature of the General Agreement on Trade and Tariffs at the close of the Geneva negotiations and its provisional entry into force during November 1947.

Any action along these lines will of course be subject to reconsideration in the light of Mr. Clayton's current discussions with top British officials in London.