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Approaches to Anglo-American Financial Co-operation*

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FROM THE EARLIEST of our colonial days, financial relations between England and the United States have been intimate and extensive. English merchant bankers financed ventures in American settlement, and granted credits to finance government, commerce and railroad building in the United States. At the outset of World War I, it has been estimated, we were indebted to the extent of about \$6,000,000,000 to Europe, the greater part to Great Britain. During that war, a substantial portion of this debt was liquidated. Then we entered a new period in our history.

This period has been one of world struggles to support our democratic traditions of personal freedom, individual initiative, free enterprise and competition. Twice over these intervening years the United States and the United Kingdom have become allied spiritually, militarily, economically, and financially, in the closest possible way, to maintain an independence of existence in a world where space and distance are being pulled ever closer together.

* An essay presented to Francis Neilson, Litt.D., on the occasion of his eightieth birthday. [Copyright, 1947, by Dun & Bradstreet, Inc.]

Today the world faces a gigantic task of reconstruction. There is every evidence that in that task the United States and the United Kingdom have great stakes in common.

I

Recent Developments in Anglo-American Finance

BETWEEN JUNE 30, 1917 and June 30, 1919 our gross Federal debt expanded from \$2,975,618,000 to \$25,482,034,000 or from \$28.57 to \$240.09 per capita. A considerable portion of this substantial increase resulted from our intimate financial relations with our allies in World War I. By four different Acts, passed by Congress between April 24, 1917 and July 8, 1918, advances of \$10,000,000,000 were authorized to be made to foreign governments.¹ For these advances, we received obligations in the form of certificates of indebtedness, payable at fixed and early dates of maturity. As the debtor governments were unable to pay at maturity, the certificates became demand obligations carrying aggregate annual interest charges of \$475,000,000.

In addition to these direct loans, huge supplies in Europe at the end of the conflict were sold on credit and occupational expenses were incurred. These obligations were now funded by fifteen European nations, the total principal of the debts under these agreements being fixed at \$11,522,000,000 of which \$4,600,000,000 was due from Great Britain, to be repaid over a period of sixty-two years.² Payments under these funding arrangements were made each year according to schedule until 1931. Great Britain paid her installment in full in 1932. One year later, in June, 1933, only Finland paid in full!

After a brief interlude, World War II exploded. In

¹ The largest credit, \$4,300,000,000, was extended to Great Britain. France received \$3,000,000,000, Italy \$1,600,000,000.

² In addition, unfunded obligations in excess of one billion dollars were due collectively from Germany, Russia, Armenia, and Nicaragua.

March, 1941 when the war had spread over an ever widening portion of the earth's surface, the Lend-Lease Act was passed by Congress providing for billions of dollars of credit in kind, merchandise, food, airplanes, tanks, ordnance, and ammunition to the democracies of the world attacked by the Axis powers. Lend-lease assistance to thirty-eight allies up to August 31, 1946 represented a total of \$48,520,530,000, while reverse lend-lease amounted to \$7,387,042,000 leaving a net sum on lend-lease of \$41,133,488,000, an amount several times as large as the aggregate credits which we had granted to our allies of World War I. The British Empire again was our greatest beneficiary, having received \$31,367,560,000, against which reverse lend-lease of \$6,319,790,000 applied, leaving a net sum of \$25,047,770,000. Soviet Russia was second, having received net lend-lease aid of \$11,264,430,000.

The extent and the intimacy of our current financial relations with Great Britain are indicated by the fact that not only will no attempt be made to collect any material sum from these tremendous advances under lend-lease, but that under a joint resolution of Congress dated July 15, 1946, we have agreed to extend to Great Britain additional credit up to \$4,400,000,000. By the Anglo-American Agreement signed in Washington on December 6, 1945, that credit is divided into two parts, \$650,000,000 representing a final settlement for all outstanding lend-lease and surplus property claims, and \$3,750,000,000 representing a maximum line of credit upon which the British may draw any time up to and including December 31, 1951. Outstanding credits under this agreement will carry interest at the rate of two per cent per annum. The interest and principal will be repaid in 50 equal annual installments beginning on December 31, 1951.

For more than two years prior to Pearl Harbor, the British fought the Nazi attacks from the air and the threat by in-

vasion by sea as her European allies fell one by one. Prior to the passage of the Lend-Lease Act, the British had purchased and contracted for all possible military, aircraft, and naval equipment and supplies that could be obtained in the United States, and had liquidated these obligations from their available dollar resources and from a \$390,000,000 loan made by the Reconstruction Finance Corporation in July, 1941, secured by the pledge of British-owned American securities. When we entered the war, "lend-lease became a two-way street" in a modified sense of the expression; American forces in Great Britain were housed, fed, transported, and partly equipped with the aid of reverse lend-lease. The smaller part of the credit extended to Great Britain under the Anglo-American Financial Agreement amounting to \$650,000,000 represents the final settlement of all outstanding lend-lease and surplus property claims. This settlement is based on the premise that the overwhelming portion of lend-lease aid has been directly consumed in the most destructive and terrible war in all history and is now water over the dam.

The larger part of this current credit, amounting to \$3,750,000,000, was granted to Britain to enable her to help herself to recover from the effect of years of little or no foreign trade, when every resource was being stretched to produce the maximum number of warships, aircrafts, ordnance, equipment, and supplies to carry on her struggle for sheer existence. Time is now needed to rebuild British factories, to equip plants with modern machinery, to purchase raw material, to convert that raw material into finished products, to export the finished products to the four corners of the globe, to re-build a world trade which is so absolutely essential to her economy, time to regain her economic strength and position lost in the common war. This amount will balance her foreign payments, that is, offset the estimated excess of imports over exports through 1951.

In return for these credits, Britain agrees to co-operate in long-range commercial policies, in building a world economy which we both want and need, a high level of international commerce and employment through reductions in barriers to world trade. We both want a free and prosperous Europe, a free and prosperous world. After July 15, 1947, pounds sterling received by foreign suppliers of the British market will be made freely convertible into other currencies so that the tendency for trade to be channeled along bilateral lines will be materially lessened. These arrangements so carefully negotiated and then debated in Congress and in Parliament, it is hoped, will make possible in conjunction with other current international co-operative movements, the expansion of employment, production, exchange, and consumption throughout the world, that is, a high level of world industry and commerce.

II

Correlating Anglo-American Financial Policies

IT BECOMES MORE EVIDENT daily that the hazards of the peace we have won are great. Our joint heritage with Great Britain in democracy, in freedom of press, in freedom of speech, in freedom of religion, in freedom of assembly, in freedom of politics, and in the right to live one's own life free of totalitarian oversight, domination, and regimentation, has made it natural that we should consider world policies along parallel lines to protect that great common heritage. The open line of credit of \$4,400,000,000 testifies that this correlation is worldwide and has become economic and financial in a very practical way. The stage is the world. The stakes are security for ourselves and for the British Empire, expanding world trade and prosperity. We are committed to stand and plan and work together.

For many decades London was the financial center of the world-and pounds sterling the acknowledged international

currency. In the early years of our own national life, it was a common practice for American merchants to keep their books in pounds, shillings, and pence, and to have an extra blank column on the pages in their ledgers to be used when converting the first entries into dollars and cents at their leisure.

Over the decades the English technique of investing funds in foreign securities was eased by the creation of nominees, that is, recognized responsible financial houses which earned a profit in "marking for dividends." In more recent years, as the pressure for international investing developed in our New York financial market, the modified technique of investing in the stocks of selected representative foreign corporations in a manner which would conform more closely with our financial customs, practices, and requirements was developed by the use of American Depositary Receipts and American Share Certificates.³

The Securities Act of 1933 and the Securities Exchange Act of 1934 did not contemplate restrictions in the buying, selling, or holding of shares in foreign corporations by a private investor in the United States, as distinguished from an underwriter or dealer in securities. No part of these Acts, and no paragraph of any regulation which has been issued over the year by the Securities and Exchange Commission would seem to have been compiled for the purpose of altering this fundamental assumption. The economic wisdom of restricting such foreign investments by individuals would be questionable, and its practical enforcement virtually impossible. As the most powerful industrial nation in the post-war world we have tremendous ability to export capital through the organization of wholly owned or partly owned foreign subsidiaries of American corporations, through the underwriting of securities of successful foreign business cor-

³ For an account of the origin and functioning of these devices, see my "Security Exchanges in World Finance," New York, 1947, pp. 20 ff.

porations in our financial markets, and through the investing in shares of foreign corporations which already have distribution in some one of the financial centers of the rest of the world. The international trading in securities may well affect balances of payments and constitute an important part in the reorganization of the mechanism of foreign exchange.

American Depositary Receipts and American Share Certificates come under the jurisdiction of the Securities and Exchange Commission when there is a public offering under the Securities Act of 1933, and when admitted to trading on a national securities exchange under the Securities Exchange Act of 1934. In the light of our great ability to export capital in a world where the absolute necessities and the utilities as well as the luxuries of civilization have received the most intensive destruction over the widest area in all history, where war-exhausted countries need extensive financial assistance to rebuild their shattered economies, it would seem expedient that the utmost consideration be given to the means for smoothing the way for international financial relations. To such an objective the Securities and Exchange Commission undoubtedly would subscribe as essential to reach the overall objectives of nondiscrimination in world trade and material expansion in world trade, the basis of the Bretton Woods Agreements, the Anglo-American Financial Agreement, and the International Trade Organization.

Three possible approaches with varying degrees of regulation and control to that area of international finance and trade which could be materially affected by the issuance of American Depositary Receipts and American Share Certificates, might well receive consideration to reach such a broad and fundamental objective. These three approaches are outlined in the following paragraphs. The least possible regulation is outlined in the first approach which is based on the assumption that these instruments are actual substitutes for

foreign securities and so might well be considered foreign securities, a greater degree of regulation in the second approach under which these securities are considered as definitive domestic securities, and still more regulation in the third approach which considers the possibility of the unification of disclosure requirements under the laws of the United States and Great Britain:

1. *Depository Receipts and Share Certificates Considered "Substitutes" for Foreign Securities:* In investing in the securities of foreign corporations in the form of "substitution certificates," that is, American Depository Receipts and American Share Certificates which might be listed or admitted to trading privileges on national securities exchanges, the requirements of the Securities Exchange Act of 1934 might possibly be more liberally interpreted by the Securities and Exchange Commission, or the Act might be amended by Congressional legislation substantially exempting these instruments. The basic assumption for such an approach would be that American Depository Receipts and American Share Certificates actually are substitution certificates for foreign securities. On this assumption no material restriction would exist in trading on national securities exchanges of issues listed on approved foreign exchanges as no restrictions exist in the purchase of definitive foreign securities in a foreign market or in our over-the-counter market by a private investor in the United States as distinguished from an underwriter or dealer in securities. Those interested in the expansion of American financial interest throughout the world, who believe that foreign investment would assist in the growth of world trade, under the assumption of this approach, would have a recognized medium of international finance which has been tested in the New York financial market through years of war and peace, prosperity and depression.

2. *Depository Receipts and Share Certificates Considered Definitive Domestic Securities:* If American Depository Receipts and American Share Certificates are not considered as substitution certificates for foreign securities, but in the nature of definitive domestic securities, they would then be subject automatically to the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the rules and regulations of the Securities and Exchange Commission issued under these two Acts. Under this second approach the primary subject of disclosure of information would have two possible interpretations:

(a) Financial and collateral information available in the country of origin, while adequate according to existing laws, rules, regulations, and customs of such a country, might not quite fulfill the disclosure requirements of the Securities and Exchange Commission. The question would arise as to whether such information, adequate in the country of origin, should be considered adequate or substantially adequate by the Securities and Exchange Commission for the purpose of allowing the purchase and sale of American Depository Receipts and American Share Certificates representing the issues of those corporations on the floors of national securities exchanges, even if the information might not fulfill the full disclosure requirements of the Commission. In other words should disclosure requirements adequate in the country of origin be considered adequate for world trading in those particular securities in the United States?

(b) Financial and collateral information available in the country of origin might provide adequate or substantially adequate disclosure according to the Securities Exchange Act of 1934 and the rules and regulations of the Securities and Exchange Commission. The question then would arise as to whether such financial and collateral information freely available to the public in the country of origin, might be considered adequate for the purpose of the Securities and Exchange Commission to permit listing or trading privileges on the floors of national securities exchanges, or whether the Commission would require the foreign corporation, itself, or some individual or agency that might not be associated with the corporation but interested in the distribution of its securities, to file the information available in the country of origin, in the United States directly or indirectly with the Commission at periodic intervals. In other words, should disclosure requirements in the country of origin be substantially

adequate according to the requirements of our Securities and Exchange Commission, would that disclosure abroad be adequate or would it be necessary that the information be filed with the Commission?

3. *Unification of Disclosure Requirements under laws of United States and Great Britain:* The third approach applies specifically to our relations with Britain. If American Depositary Receipts and American Share Certificates are not to be considered in the nature of "substitution certificates" for foreign securities for the purpose of listing or trading privileges on the floors of national securities exchanges as outlined in the first approach; if information is adequate according to the laws, rules, regulations, and customs of the country of origin but is not to be considered adequate according to the requirements of the Securities and Exchange Commission as outlined in the first part of the second approach; if adequate or substantially adequate information according to the requirements of the Securities and Exchange Commission is available in the country of origin but that information is not considered sufficient by the Commission unless filed directly or indirectly with the Commission as outlined in the second part of the second approach; the question then arises as to whether consideration should be given to the idea of unifying or correlating the subject of disclosure and the simultaneous acceptance of that information as applied to the securities of public corporations at least in both the United States and the United Kingdom?

III

A Basis for a Broadening Financial Market

IF THE EXTENSIVE AMENDMENTS proposed in the *Report of the Committee on Company Law Amendment* do not quite satisfy the full requirements of the Securities and Exchange Commission, although many of the suggested amendments go farther toward full disclosure than are required in the United States under existing legislation and under the rules and regu-

lations of the Commission,⁴ it is suggested this subject be thoroughly and completely analyzed and studied by an Anglo-American Securities Commission interested in the closely related subjects of corporate disclosure, international finance, and world trade.

Should there happen to be blind spots among the extensive amendments suggested to the Companies Act, 1929, by the Comprehensive Cohen Report from the viewpoint of the Securities and Exchange Commission, no matter how limited they may be, or should the requirements of the Commission not seem adequate to those interested in disclosure in Britain, it might be expedient, practical, and desirable that these questions be thoroughly explored for mutual solution.

If the disclosure requirements of the United States and the United Kingdom could then be unified by suggestions made by such an Anglo-American Securities Commission, rules and regulations covering the listing and the trading in American Depositary Receipts and American Share Certificates on national security exchanges could be modified so that trading would be as free in the United States in these instruments as is trading under normal conditions in stocks of American corporations in London.

We should then have a basis for a broadening financial market in a world which must look to the United States for capital on an unprecedented scale if the world remains at peace, and if a higher standard of living produced by industrialization is the political and economic objective in democratic countries which believe freedom of enterprise and freedom of the individual are fundamental conceptions of a way of life.

New York

⁴For a discussion of the Companies Act and the Cohen report, see the section on "United States and British 'Disclosure Laws'" in my "Security Exchanges in World Finance," *op. cit.*, pp. 25 ff.