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Foreward to Articles on Currency Manipulation

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FOREWORD

THE QUESTION OF CURRENCY MANIPULATION

Charles Blum

The persistent undervaluation of a foreign currency can have prolonged pernicious effects on American producers both in their own and foreign markets. The essence of the problem seems clear. An undervalued currency enables a foreign government to fix prices entering and leaving its home market. Offerings of foreign goods must overcome a de facto, hidden tax or tariff. At the same time, its offerings to foreign markets benefit from extra earnings in the home market currency. It's artificial and unfair.

But is it illegal? More to the point, can anything be done to correct undervaluation when it occurs and to deter it from recurring? The complexity and difficulty of these issues is the common thread running through three papers in this issue of the *Journal of International Business & Law*.

Jeff Beckington and Matt Amon have done a masterful job of tracing the problem back to its historic roots. They aptly point out the role that competitive currency devaluations played in broadening and deepening the Great Depression. That's a useful correction to the oft-repeated but misleading argument that it was a tariff war — and the notorious Smoot-Hawley Tariff Act of 1930 in particular — that caused the great bulk of the desperate economic conditions spawning the Second World War.

Beckington and Amon also shed light on how the post-War commitment to building a multilateral rule of law to manage economic conflicts came up short in the monetary area. The General Agreement on Tariffs and Trade (the GATT) and the Articles of the International Monetary Fund each identified monetary manipulation as a source of potential problems in the future (as it had been in the decade before the War), but neither succeeded in precisely defining the objectionable practice. More important, neither provided a meaningful remedy that injured parties could avail themselves of in response to those practices. In effect, the world was left with vague rules and no effective remedy.

Fred Bergsten, monetary guru to a generation or two of policy wonks, provides additional insights into the problem. His main point — that the imbalances spawned by currency misalignments threaten the stability of today’s global system — has become part of mainstream thinking and regularly gets lip service at least when the G-20 meets. While he is undoubtedly correct in arguing that the best solution to this vexing problem should be found in a strengthening of the multilateral rules and institutions, part of his solution is to rely on those same rules and institutions as they are to generate a solution.

He recognizes this limitation himself and thus advocates an interesting approach of fighting fire with fire, in effect the printing of money to buy foreign bonds with the aim of driving up the value of the foreign currency. The appeal of such an approach is clear: it addresses the lack of leverage that has condemned the efforts of Treasury secretaries since John Snow to a history of frustration and failure in seeking some form of negotiated solution. In the end, one must question whether Bergsten’s inventive approach would ever be consid-

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Beckington and Amon would agree with Bergsten, I believe, that a multilateral solution would be best. But the history they outline tells a cautionary tale. Even when the world was dominated by two countries—the United States and the United Kingdom—it proved impossible to negotiate a lasting solution for monetary competition. This is not to argue that such a solution should not be pursued. Rather the lesson is that effective means must be found to deal with the injurious effects of currency undervaluation in the interim.

In that regard, the paper by Elizabeth Pettis is particularly interesting. Her dispassionate analysis of the legal merits of neutralizing undervalued currencies by means of countervailing duties, the standard remedy for injurious subsidies under the rules of the World Trade Organization, seems sound. Any use of countervailing duties would surely give rise to litigation under the WTO dispute settlement mechanism. A world in need of clear rules and effective remedies should welcome such litigation as a step toward a more effective, multilaterally agreed solution built to last.

Together these three papers represent a valuable addition to the debate that needs to be joined on its legal and economic merits, not only in the United States but throughout the world.