



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
April 21, 1989

Handwritten: *May 21/89*
URGENT

LEGISLATIVE REFERRAL MEMORANDUM

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STAT

SUBJECT: Revised State/AID report on the March 17, 1989, Discussion Draft that is the "Proposed Implementation of Most Recommendations of the House Foreign Affairs Committee's Task Force on Foreign Assistance."

NOTE: With the exception of certain provisions involving congressional consultation and reporting, this draft reflects the results of numerous interagency comments on this legislation. Unless you advise us by NOON, MONDAY, APRIL 24th of specific concerns we will assume your agency has no further comment on this report. It is important that this report be transmitted to HFAC by early Tuesday, April 25, 1989, if the Administration's views are to be considered before the printing of the committee's final markup print.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

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A response to this request for your views is needed no later than NOON, MONDAY, APRIL 24, 1989.

Questions should be referred to **SUE TEAU/ANNETTE ROONEY** (395-7300), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosure

cc: C. B. Gray
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URGENT

Dear Mr. Chairman:

We appreciate the opportunity to provide Administration comments concerning the amendments to the Foreign Assistance Act contained in the Committee's March 17 Discussion Draft. This continues a process of mutual cooperation that has proven very productive in the context of the Defense Trade and Export Control Act and the Multilateral Assistance Initiative legislation for the Philippines. Very shortly we will be transmitting the Administration's FY 1990 authorization proposals which I hope will receive your Committee's careful review. I look forward to continuing this cooperative relationship with the Committee in the months and years to come.

As you well realize, the task of making substantial changes to legislation first enacted in 1961, and amended annually thereafter, is both an enormous undertaking and one that is long overdue. We appreciate greatly your efforts and those of other Members and staff to take a fresh look at our foreign assistance program with an eye to fostering greater cooperation between the Congress and the Executive Branch and streamlining the administration of our foreign assistance program.

remarks and other restrictions

In that spirit, we have reviewed the legislation with all interested departments and agencies and provide the attached comments as our initial reaction to the provisions in the Discussion Draft. We view these comments as a starting point from which a bill can be developed which is mutually acceptable and which brings a better focus to our foreign assistance efforts. Over the years, the Foreign Assistance Act has been amended to the point that ~~the combination of the number of program "priorities" contained in the statute and the number of countries for which assistance is provided~~ has resulted in a lessened ability to bring adequate resources to bear on fundamental economic problems. We view your efforts as important to reversing the trend toward overwhelming our foreign assistance program with a myriad of programmatic requirements.

The attachments that follow contain our initial views on the provisions in the Discussion Draft. Where we have thought it helpful, we have provided alternative language for your consideration. Comments previously have been provided on the military assistance title and therefore that title is not reviewed in this letter. We hope that the following comments will foster the dialogue on the foreign assistance legislation with the end result being a statutory framework within which our foreign assistance program can best ~~represent~~ *serve* the national interests of the United States.

The attachment to

Sincerely,

Sec State

TITLE I - Economic Assistance

Section Discussion

1101- Prefer alternative language which is shorter, clearer,
1103 and more straightforward, and which focuses on the objectives
of our assistance programs rather than the means to achieve
those objectives. We agree with the four basic objectives
(although we would prefer that "poverty alleviation" be
retitled "human resources development"), but believe that
they should stand alone as they do in the Committee's Task
Force (Hamilton-Gilman) Report recommendations and not be
subordinated to a single "purpose" which appears to be
defined not only by the four objectives but also by
"cross-cutting elements" and the fifteen specific programs in
section 1103. We believe further that the specificity of the
cross-cutting elements and fifteen programs runs contrary to
the Hamilton-Gilman Report recommendations calling for
reduction in priority areas. We believe the language lends
itself to further amendments adding to the priority concerns
that A.I.D. must address. Tab A contains our proposed
alternative language.

Chapter 2 - Development Assistance

1201 Preference would be for language which did not distinguish
between long and short-term development since those terms are
not defined and, in any event, the distinction may be an
artificial one. Tab B contains language which we find
preferable and which incorporates, as well, the authority
contained in section 1205 of the Discussion Draft. In
addition, the provision authorizes the use of Development
funds for A.I.D. operating expenses.

1202 Accept.

1203 Preference is to delete subsection (c) since that subsection
implies that assistance may be provided to one organization
only if assistance is provided to all organizations. We
would prefer, instead, inclusion of current law requirement
that assistance may not be provided to influence the outcome
of any election in any country. During subcommittee markup,
the Yatron subcommittee amended the Discussion Draft to
delete the police training exception (page 30 line 13 to page
31 line 4). We would prefer that this language be reinstated
or, at the least, that it be restored but limited to the
Latin America and Caribbean region. Recommend deletion of
subsection (f). Since the total amount of assistance under
this section is not specified, the limitation contained in
this subsection could drive decisions on the total made
available for the whole program.

- 1204 Accept but would insert ", in addition to funds otherwise available for such purposes," after "President".
- 1205 As noted in our comments on section 1201, the alternative language for that section includes the authority for strengthening U.S. institutions. If that formulation is accepted then section 1205 can be deleted; otherwise, we can accept the provision without change.
- 1206 Propose deleting the second sentence of this section. Although not mandatory, as written it creates an artificial standard for host country contributions and seems to contradict the first sentence which calls for the contribution of "an appropriate share" of project costs.
- 1207 Accept.
- 1208 Accept.
- 1209 Accept but would recommend certain modifications regarding, among other things, project size, selection criteria, reserve requirements, and certain technical changes. Tab C contains suggested language.
- Chapter 2 - Economic Support Assistance
- 1301 We would substitute the current language authorizing Economic Support Fund assistance for the language in section 1301 of the Discussion Draft. We believe, as noted above, that the distinction between long and short-term development is too nebulous and undefined, and will create unnecessary confusion in trying to determine whether a particular activity should be funded with Development or Economic Support Funds. We also do not believe that section 1301 gives adequate recognition to the U.S. economic, political, and security objectives that motivate decisions to provide ESF assistance. The section would judge the performance of an economic assistance account that is essentially motivated by U.S. international interests and foreign policy concerns against criteria more applicable to assistance programs motivated predominantly by development concerns. Moreover, the limitation on the modes of providing the assistance would greatly reduce flexibility. We believe that current law more accurately reflects the nature of this assistance program.

1302 Accept.

1303 We would propose deleting this section. While it creates no statutory requirement that local currencies be generated from ESF assistance, it strongly suggests that they should be. The section then creates an artificial requirement that at least 50 percent be used for development purposes. Since local currencies are addressed elsewhere in the bill, we would propose deleting this section and handle the question in a single provision.

- We would propose reenacting as permanent authority the current section 533, Emergency Assistance.

- Given the increasing number of incidents in which the Executive branch and the Congress have found it desirable to provide assistance to the victims of civil strife or to resistance forces (examples include Afghanistan and the non-communist Khmer Rouge), we would propose a general authority to use ESF, notwithstanding any other provision of law, for assistance to such groups. Language for your consideration is attached at Tab D.

1304 Accept.

Chapter 4 - International Organizations

1401 The Administration recommends replacing "promote the four basic objectives set forth in section 1102" with "further the purposes of this title". The modification would encompass the more detailed purposes for assistance elaborated throughout title I, as well as the generalized objectives outlined in section 1102.

1402 Accept.

1403 The Administration's preference is to delete this section. Disapproval of expenditures by an organization or programs administered by organizations for specific groups or countries is more appropriately manifested through reduced appropriations to the organization or program rather than by withholding provisions.

1404 Accept.

1405 Subsection (b) should be deleted since the reports are duplicative of the reports required under subsection (a).

1406 The Administration proposes the deletion of this section. Subsection (a) raises a substantial constitutional question by purporting to require the President to include certain terms in international agreements. The deletion of subsection (b) is proposed because the purpose of this provision has been achieved. Each of the organizations referred to in this subsection has an external group that examines, reviews, evaluates, and audits its programs and activities.

1407 Accept.

Chapter 5 - Private Sector Involvement in Development

Subchapter A - OPIC

1501 Accept.

1502 Accept.

1503 We have the following suggested changes:
(1) page 55, line 7, delete "Chairman and Vice Chairman" and insert in lieu thereof "Chair";
(2) page 55, line 10, delete "Vice Chairman" and insert in lieu thereof "Vice Chair";
(3) page 55, lines 13-14, delete "the Deputy" and insert in lieu thereof "a Deputy" to reflect that there are three USTR deputies;
(4) pages 55-57, switch subparagraphs (C) and (E);
(5) page 56, line 15, delete "traveltime" and insert in lieu thereof "travel time";
(6) page 56, line 21, delete "Six" and insert in lieu thereof "Four additional", in order to maintain the existing Board structure of seven public sector board members;

1504 Accept.

1505 Accept.

1506 Accept, but propose the following modifications: (1) in subsection (b) insert the following paragraph which is essentially in the current section 240:

"(3) Allocation of Income.-The Corporation shall allocate up to 50 percent of its annual net income, after making suitable provision for transfers and additions to reserves, to assist and facilitate the development of projects consistent with the provisions of this subsection. Such funds may be expended notwithstanding the requirements of section 1501(c)(1), on such terms and conditions as the Corporation may determine through loans, grants, or other programs authorized by sections 1504 and 1505."

(2) in subsection (f) insert the following paragraph:

"(3) Mandatory and Exclusive U.S. Effects Analysis. The analysis required by this subsection is mandatory and exclusive with respect to U.S. effects of the Corporation's programs, including effects on exports and employment, and shall not be limited or modified by any other provision of this Act."

1507 Accept, but in subsections (a)(2)(C) and (b)(2) we would propose striking the words "not less than" in both places. Also in subsection (a)(2)(C) change "1505(b)" to "1504(b)".

1508 Accept.

1509 Accept.

1510 We are proposing the following modifications:
 (1) in subsection (c)(8) insert "subject to the authority of the Attorney General and" before "notwithstanding";
 (2) deletion of subsection (d) and inserting in lieu thereof the language contained in Tab E; and
 (3) deletion of subsection (f) and inserting in lieu thereof the following:

"(f) Corporate Operational Guidelines.-The Corporation shall establish and publish guidelines for its programs and operations consistent with the provisions of this subchapter, which provisions shall be controlling with respect to the Corporation's programs and operations, and shall make such guidelines available to applicants for insurance, reinsurance, guarantees, financing, or other assistance provided by the Corporation."

1511 Accept, but suggest technical change to page 96, line 2 by inserting "the" before "Corporation", and on page 98, lines 18-19 by deleting "this Act".

1512 Accept.

Subchapter B - Trade and Development Program

1521 We would amend section 1521(c) to allow TDP programs to be undertaken notwithstanding any other provision of law, rather than notwithstanding any other provision of this Act.

1522 The Administration currently has subsection (a) under review. We would recommend that subsection (b)(2) be amended to delete "bilateral development" and to insert in lieu thereof "Trade and Development Program".

1523 Accept.

1524 Accept.

1525 Accept.

- We recommend inserting a new provision establishing a statutory inspector general for TDP. The proposed language is at Tab E.

Chapter 6 - International Disaster Assistance

1601 Accept.

1602 Accept but would delete reference to the four basic objectives since these are not applicable to the provision of disaster assistance.

1603 Accept.

1604 Accept but suggest inserting after "appropriations" on line 12 the following: ", notwithstanding that funds are earmarked by this or any other Act,". This would enable the Administration to use earmarked funds for disaster purposes, notwithstanding that they may be earmarked for another country or purpose.

- We would recommend restoration of the language contained in current law (FAA section 493) authorizing the President to designate a Special Coordinator for International Disaster Assistance.

Chapter 7 - Other Economic Assistance Programs

1701 Accept.

1702 We would accept this section but recommend the inclusion of a new subsection which provides the Export-Import Bank with the authority to charge fees and premiums in connection with financing provided under TCIP. Draft language is provided at Tab F.

1703 In subsections (h), we would delete the increase in the guarantee ceiling and restore the figure contained in current law. We would also recommend deleting subsection (i).

1704 This section should be deleted - it is not a functioning program.

1705 Accept, but should be modified to reflect the deletion of section 1704. In addition, we would propose deletion of subsections (f)(1)(A) and (B) which place a \$100 million ceiling on funds which can be borrowed from the Treasury for the purpose of housing guaranty reserves. Since these are full faith and credit guarantees, placing a dollar ceiling on borrowing from the Treasury serves no purpose.

1706 We would accept subsections (a) through (f) with a further limitation in subsection (d) that this authority is available only for relatively least developed countries and countries in sub-Saharan Africa. The budget implications of extending this authority to all developing countries are too significant, we believe, to warrant expansion of the existing authority beyond its present scope. We would also propose including the language contained in section 572 of the FY 1989 foreign assistance appropriations act conditioning country eligibility for participation in this program on an IMF structural adjustment facility, enhanced structural adjustment program, or standby or a World Bank structural adjustment program being in effect with regard to such country.

On page 121, lines 5 and 21, reference should be to subsection (c) vice subsection (b). We would generally suggest with regard to subsections (a) through (f) that they might be redrafted in a more simplified form.

We would further recommend striking, on page 124 line 7, "the objective of resource sustainable development" and substituting "the objectives of section 1102". We believe that this authority should be available for all economic assistance programs and not just those dealing with resource management.

Chapter 8 - Reimbursable Development Program

- 1801 Accept.
- 1802 Accept but suggest the following modifications: (1) in subsection (a), delete "for the purposes for which such appropriation, account, or fund is authorized to be used" and insert in lieu thereof "until expended", (2) delete subsections (b) and (c).

Chapter 9 - Administration of Economic Assistance Programs

Subchapter A - Operating Expenses

- 1901 We are recommending that this section be deleted since our language at Tab B includes the authority to use program funds for A.I.D. operating expenses.
- 1902 Accept.
- 1903 Recommend that the provision be deleted since we believe it inappropriate that, at the sole discretion of the Inspector General, the IG can require the transfer of resources from economic assistance accounts. If an authority is felt necessary to augment IG appropriations, that authority should be, we believe, a transfer authority similar to that now contained in section 109 of the FAA.

Subchapter B - Evaluation

- 1921 We recommend deletion of subsection (c)(1) through (3), since we believe it unnecessary to include in law the organizational structure and responsibilities of A.I.D.'s evaluation unit. We also recommend, on p.130, line 1, after the word "of", that you insert the words "country, regional and centrally funded"; and on p. 130, line 15, that you delete the word "policy".

Subchapter C - Cooperation with Nongovernmental Sector

- 1941 We recommend deletion of this section and substitution of a requirement that the President establish three advisory boards in the following areas: international food and agriculture, PVOs and cooperatives, and the private sector. Attached at Tab G is alternative language for your consideration. We do not feel, in particular, that it is appropriate for the council or advisory boards to serve in fact as both an advisory body to the Executive Branch as well as to the Congress as implied in subsection (d).

TITLE III - Terrorism and Narcotics

Chapter 1 - International Terrorism

- 3101 Accept.
- 3102 Accept.
- 3103 Accept.
- 3104 The Administration recommends modification of subsections (c) and (d) of this section. First, the Administration believes that subsection (c) should be amended to be hortary by replacing the word "shall" in line 17 with "should". Second, the Administration supports the modification of subsection (d)(1) and (3) to broaden the authorities for antiterrorism training. The changes to subsection (d)(1) and (3) are proposed to permit specified training to be conducted outside the United States and to permit the Bureau of Diplomatic Security of the Department of State to provide training in additional subjects to foreign law enforcement personnel. These changes will result in substantial cost savings to the antiterrorism programs and increase the program's effectiveness. Substitute language for subsection (d)(1) and (3) is attached under Tab H.
- 3105 Accept.
- 3106 Accept.
- 3107 Accept.
- 3108 The Administration notes that this section is inconsistent in several respects with a parallel provision prohibiting assistance to countries supporting terrorism, i.e., section 4201(a)(3). The Administration recommends the deletion of section 4201(a)(3).

Chapter 2 - International Narcotics Control

- 3201 Accept.
- 3202 The Administration recommends adding to this section the following two subsections following subsection (c):
 "(d) Coordination.—The Secretary of State shall be responsible for coordinating all assistance provided by the United States Government to support international efforts to combat illicit narcotics production or trafficking." This directive,
 "(e) Rule of Construction.—Nothing contained in this section shall be construed to limit or impair the authority or responsibility of any other Federal agency with respect to law enforcement, domestic security operations, or intelligence activities as defined in Executive Order 12333.

Subsection (d) sets forth the coordination responsibility of the Secretary of State in regard to international narcotics control assistance and reflects existing law. We believe that this provision articulates a principle important to the effective conduct of foreign policy as it relates to narcotics control and therefore should be retained. Subsection (e) reflects a provision contained in Chapter 1 of Title III, which is equally applicable to this Chapter.

- 3203 Accept.
- 3204 The Administration proposes the deletion of this section. Formula-sharing proposals, such as the 25-percent contribution requirement of this section, deny the Administration the flexibility needed in dealing with Third World governments engaging in bilateral narcotics control programs.
- 3205 Accept.
- 3206 Accept.
- 3207 Accept.
- 3208 Accept.
- 3209 The Administration proposes one change to this subsection - the modification of subsection (b) by replacing the word "shall" in line 19 with the word "should".
- 3210 Accept.
- 3211 Accept.
- 3212 The Administration recommends the deletion of this section since it raises, at least insofar as it applies to U.S. citizens, constitutional and Privacy Act issues.
- 3213 Accept.
- 3214 To authorize the presence of U.S. officers or employees at an arrest by foreign officers, we propose that the last sentence of subsection (a) be modified to read as follows: "This paragraph does not prohibit an officer or employee from being present at the scene of an arrest or otherwise assisting foreign officers who are effecting an arrest."

3215

Three modifications to this section are recommended. First, the Administration recommends the deletion of subsection (a)(2)(F). This provision undercuts the principle of open and candid discussion among Executive Branch agencies which is critical to the decision-making process.

Second, the Administration believes that determinations regarding a foreign country's cooperation in narcotics control and eradication programs should take into account actions taken by that country in the year under assessment and actions to be taken during the next fiscal year. Negotiations with drug producing and transit countries regarding narcotics control and eradication programs are based upon this proposition. We therefore propose that section 3215 be amended to reflect this important principle (currently contained in section 481(e)(4) of the Foreign Assistance Act) by adding the following sentence at the end of subsection (a)(2)(D):

"Such determination shall be based upon (i) measures which the country is currently taking, and the measures which the country has planned for the next calendar year, in order to prevent narcotic and psychotropic drugs and other controlled substances from being cultivated, produced or processed, in whole or in part in such country, from being transported through such country or from entering the United States unlawfully, and (ii) the other information provided pursuant to this subsection."

Third, the Administration supports (1) the inclusion of language contained in current law regarding agency consultation with the Congress on the INCSR and the annual certifications, and (2) a clear indication of the relationship between the international narcotics control strategy report (INCSR) and the certification process, viz., that the certification decisions are based upon the INCSR assessment and upon the recommendations of the Department of State. Language amending section 3215(a) to implement these changes is attached under Tab I.

3216

The Administration recommends five changes to this section. First, the Administration proposes that for purposes of section 3216, the list of major illicit drug producing or

major drug-transit countries which are subject to certification each March 1 be limited to those countries notified to the Congress at the start of each fiscal year under section 3217(c) as likely to be determined to be a major illicit drug producing or major drug-transit country. This modification would in effect seal the list of countries subject to this section as of October 1. We believe that this change is important; the restrictions on assistance in section 3216 would otherwise present a problem with respect to other countries, where the applicability of the prohibition on assistance is not foreseeable, since funds for those countries may have been obligated and expended prior to March 1.

Second, the Administration proposes the insertion of the word "essential" in subsection (b)(2)(E) before "precursor chemicals" to establish more clearly the chemicals appropriately covered by this provision.

Third, the Administration proposes that, in subsection (d), "45 calendar days" be substituted for "45 days of continuous session (within the meaning of section 601(b)(1) of the International Security Assistance and Arms Export Control Act of 1976)". A waiting period of 45 days of continuous session, given congressional recess periods, results in a withholding of assistance for as much as eight months of the fiscal year, despite the fact that the country has been fully cooperating in narcotic control and enforcement efforts. Finally, the Administration recommends amending section 3218(f)(1) to read as follows:

"(f) Recertification.--

(1) Time of Recertification; Congressional Action.--Subsection (e) shall apply to a country until the President makes a certification of the matters described in subsection (b) with respect to that country, and the Congress does not enact a joint resolution under subsection (d) disapproving the determination of the President contained in that certification."

This modification would bring into conformity the congressional review procedures applicable to a recertification under section (f) and the procedures outlined in section subsection (d) relating to an original certification.

Fourth, the Administration recommends adding to the end of this section a provision contained in section 4406 of the Anti-Drug Abuse Act of 1988 which waived, for certain major drug-transit countries, the requirement to withhold assistance pending certification. This waiver, which applies only if the country was previously designated a major illicit drug producing country and effectively eliminated its illicit drug production in the preceding two years, provides an incentive for for narcotics producing countries to reduce illicit drug production. Specific language is attached under Tab J.

Finally, to avoid potential constitutional problems created by the current wording of subsection (a)(2), the Administration proposes that this subsection be changed to a sense of Congress provision and that language be added indicating the Secretary of Treasury should act under the direction of the President.

3217 The Administration would propose a conforming change to this section -- the deletion of subsection (d) -- if its recommendation to limit the countries subject to section 3216 to those countries notified at the beginning of the fiscal year is accepted.

3218 The Administration believes that economic support and development assistance programs that are linked to narcotics eradication programs should be exempted from the prohibitions on assistance contained in chapter 2 of title I. Narcotics eradication efforts clearly could not be continued if supportive assistance activities are halted. Consequently, we propose that the definition of "United States assistance" in this section be modified to exclude certain economic support and development assistance programs. In particular, we recommend that section 3218(5)(B)(vii) be amended by inserting "or projects that are programmatically linked to reductions in the cultivation of illicit narcotic crops" after "producing and transit countries".

TITLE IV - Special Authorities

Chapter 1 - Special Authorities

4101 Accept.

4102 We prefer that this provision more closely reflect current law. That is, subsection (a) should be amended by substituting "important" for "essential" and subsection (b) should be amended by substituting "vital" for "essential". This is a critical authority about which there has never been a suggestion of abuse. The requirement for prior consultation has been always scrupulously complied with and the views of Members taken into account before any action has been taken. Raising the standard to "essential" will, at the least, make it much more difficult to exercise this authority particularly with regard to economic assistance. Additionally, we recommend inclusion of the current section 614(c) which was omitted from the Discussion Draft.

4103 This section, which mirrors section 451 of the FAA, provides that up to \$10 million of funds made available in any fiscal year may be used for emergency purposes. It is an ambiguous provision, however, and does not contain an overall limit on the amount that may be furnished during any fiscal year. We would modify this section to allow the use of up to \$50 million during any fiscal year, as follows:

"Sec. 4103. Contingencies Involving Nonmilitary Assistance.

"(a) Notwithstanding any other provision of law, the President is authorized to use funds made available to carry out any provision of this Act (other than chapter 2 of title I) in order to provide, for any emergency purposes, assistance authorized by title I, chapter 6 of title II, or chapter 1 or chapter 2 of title III, in accordance with the provisions applicable to the furnishing of such assistance, except that the authority of this subsection may not be used to authorize the use of more than \$50,000,000 during any fiscal year."

4104 We would recommend that this provision be modified to allow the adoption of other obligations in addition to contracts. Thus, on page 242, line 24, insert after "contract" the phrase "or other obligation". At the end of subsection (b) we would insert after "assistance" the phrase "for the purpose of making an equitable settlement of termination claims under extraordinary contractual relief standards".

4105 Accept.

4106 Accept.

Recommend adding a new provision, patterned after the current section 663 of the FAA, which would read as follows:

"Sec. 4107. Exchanges of Certain Materials.

"(a) Exchange for Raw Materials.-Notwithstanding any other provision of law, whenever the President determines it is in the United States national interest, he shall furnish assistance under this Act or shall furnish defense articles or services under the Defense Trade and Export Control Act pursuant to an agreement with the recipient of such assistance, articles, or services which provides that such recipient may only obtain such assistance, articles, or services in exchange for any necessary or strategic raw material controlled by such recipient. For the purposes of this section, the term "necessary or strategic raw material" includes petroleum, other fossil fuels, metals, minerals, or any other natural substance which the President determines is in short supply in the United States.

"(b) The President shall allocate any necessary or strategic raw material transferred to the United States under this section to any appropriate agency of the United States Government for stockpiling, sale, transfer, disposal, or any other purpose authorized by law.

"(c) Funds received from the allocation of materials under subsection (b) shall be credited to the current applicable appropriations, funds, or accounts of the agency that provided the assistance, articles, or services under subsection (a) of this section."

Chapter 2 - Restrictions on Assistance

4201 This is a lengthy and complicated provision in which many helpful steps have been taken to remove barnacles that have constrained our flexibility in foreign affairs. We would further make the following recommendations:

(1) inclusion of the list of communist countries in current law (section 620(f) of the FAA), clarification in subsection (d)(3) that removal of a country from the list means that sanctions contained in the Act and any Act referencing this section shall not be applied (as in current FAA section 620(f)(2));

(2) delete subsection (a)(3) since this is already addressed in section 3108 regarding terrorism;

(3) in subsection (a)(4)(A)(ii) by deleting "abrogated" and inserting in lieu thereof "repudiated or nullified". As an alternative, it would be even more preferable if the provision re expropriation were drafted in such a way that the President is to take into account whether a government has taken such action in determining whether and how much assistance to provide;

(4) delete subsection (a)(5);

(5) amend subsection (a)(6) to read as follows: "Any direct support to any project or activity that is specifically designed to increase exports of any agricultural, textile, or apparel commodity from a developing country, where such exports would be in direct competition with United States exports and can reasonably be expected to cause substantial injury to United States exporters of the same or substantially similar commodity.";

(6) restore the current authority contained in FAA section 502B to allow assistance, notwithstanding certain human rights issues, if the President determines that extraordinary circumstances justify aid;

(7) in subsection (b)(3) delete "be furnished through non-governmental channels and will" since the exemption for assistance through NGOs is contained in section 4105 and this subsection could thus be read as limiting that exemption;

(8) delete subsection (f)(1). It is our view that the valuation of a claim by the FCSC, which is under the Justice Department, is not likely to be received as an impartial valuation. We consider that not only would such a valuation be rejected, but would be counterproductive to diplomatic efforts to resolve a dispute between the parties, or submission of the dispute to arbitration.

4202 Accept.
4203 Accept.
4204 Accept.
4205 Accept.
4206 Accept.
4207 Accept.
4208 Accept.
4209 Accept.

Chapter 3 - Reports and Notifications

4301 We have several suggestions for modifications to this provision:

(1) we do not believe that the provision should be applicable to all of the programs under title I of the bill. The kinds of information requested are applicable to Development and ESF assistance but not, for example, to ASHA or International Organizations and Programs assistance. CP requirements for those specialized programs should be separately described;

(2) we suggest deleting from the presentation requirements the information contained in paragraphs (4) through (7). This information might be the subject of a different report but the data requested often is not available by early January--the date on which the CP would have to go to press;

(3) as in the past, we assume we can continue to work closely with staff in refining what is to be included in the CP.

4302 Suggest that subsection (b) be amended by deleting "shall" and inserting in lieu thereof "should"; and in subsections (e)(1) and (f) by deleting "all". The use of "should" sufficiently conveys congressional intent while avoiding the use of language that may provide a basis for private litigation. The requirement to include all information is a burdensome, if not impossible, task. Strictly construed it would require the inclusion of inaccurate and irresponsible information. The proposed change avoids this result.

4303 Accept, but recommend change 60 days to 90 days in subsection (b)(1). This would enable us not to have to develop an operating year budget for a short-term Continuing Resolution since Congress is most likely to enact a year-long appropriations measure no later than the end of December.

4304

We find the changes to the congressional notification extremely helpful. We would make just a couple of recommendations. First, we would prefer if subsection (a)(2) were deleted since the information is rarely available at the time of submission of a notification. Second, in subsection (b), we would delete "or use" both places it appears and delete paragraph (2). Finally, by listing exceptions to the notification requirement the section implies that all other programs are subject to those requirements. Yet programs like International Narcotics Control and the Trade and Development Program, both with authority to operate notwithstanding provisions of law, do not notify. Similarly, guaranty programs seem to have been given an exemption. Should the list therefore also include the Trade Credit Insurance Program and the Private Sector Guaranty Program? Paragraph (3) would be deleted since this is no longer an operative program.

4305

Accept.

4306

Accept but recommend modifications as follows: (1) on page 270 delete line 21 and all that follows through "provision," on line 3, page 271 and insert in lieu thereof "The General Accounting Office or any committee of the Congress charged with considering legislation, appropriations, or expenditures under this Act may make, to the office of the head of any agency carrying out provisions under the Act," (2) on page 271, line 8, replace the comma with a period and delete the phrase beginning with "unless there has been" through line 13, and insert in lieu thereof: "Such request should be complied with within 35 days of the date the request is delivered to the head of the agency." The formulation of this section in the Discussion Draft is inconsistent with section 313 of the Budget Accounting Act, 31 U.S.C. 716, the statutory provision which governs the availability of information to the Comptroller General.

4307

Accept but modify the section title to more accurately reflect the nature of the information to be provided: "Annual Reports Regarding Recipient Expenditures for Military Purposes".

TITLE U - General Provisions

Chapter 1 - Exercise and Coordination of Functions

- 5101 Accept.
- 5102 Accept but modify to include the language in section 622(a) of the FAA regarding the powers and functions of the Secretary of State.
- 5103 Accept.
- 5104 Administration currently has this section under review.
- 5105 Accept.
- 5106 Administration currently has this section under review.
- 5107 Accept.
- 5108 Accept but modify subsection (c) by deleting "Wherever practicable, especially in" and inserting in lieu thereof "In" and by deleting "shall" and inserting in lieu thereof "may".
- 5109 Accept but substitute the current section 654(a), modified to reflect the new Defense Trade and Export Control Act, in lieu of subsection (a) in the Discussion Draft.

Chapter 2 - Administrative Authorities

- 5201 Accept but modify subsection (c)(3) to delete "from which there" and all that follows through "is not necessary" and insert in lieu thereof "and shall remain available until expended".
- 5202 Accept but recommend the following additions and modifications: (1) amend the first line in subsection (g) to read "ASSISTANCE AUTHORITIES.-In furnishing and administering assistance under this Act, the President-"; and (2) in subsection (k) to substitute 10 years vice 5 years for commitment authority. The changes suggested reflect the changed nature of our assistance program and, with regard to the second of these changes, the fact that the kinds of projects we now conduct take place over a longer period of time.

5203 Accept but modify: (1) in subsection (a)(3) by inserting after "expenditure of funds" the phrase "(other than 31 U.S.C. 1341)", (2) in subsection (b)(1)(E)(ii) by striking out "In the case of" and all that follows through the end of that clause (ii) [this will eliminate an out-of-date price test for vehicles], (3) in subsection (b)(1)(F) by striking out the parenthetical limitation on entertainment expenses, (4) in subsection (b)(1)(J) by striking out the 10 year limitation on leases, and (5) in subsection (c) by inserting a new paragraph (4) which would read as follows: "(4) by the head of the administering agency to dispose of such property, and the proceeds of such disposition are authorized to remain available until expended for use for the same or similar purposes."

5204 Accept.

Chapter 3 - Local Currencies

5301 Accept.

5302-
5303

We would amend the proposed language in the Discussion Draft to apply accountability to these host-country owned local currencies while they are being maintained in the separate account and, subsequent to their withdrawal from the the account, only to the extent of the agreed upon uses between A.I.D. and the host country. The accountability requirement would be the host country's, not A.I.D.'s., for programmatic (as opposed to administrative) uses. There is concern that the term "accrue" would include not only those local currencies which are generated by balance of payments assistance (to which the present separate accounting requirement is applicable) but also to host country contributions pursuant to section 110 of current law. We would propose limiting the scope of the separate account requirement to current law. Finally, we would recommend deletion of subsection (b). Draft language for your review is contained at Tab K.

5304 We would propose that this section be amended to conform to current law, i.e., that it be limited to excess foreign currencies and that the use of such currencies be made subject to appropriations. The latter objective can be achieved by deleting subsection (c) from the Discussion Draft.

5305 Accept with two modifications: (1) in subsection (c)(1) by inserting "repayment" vice "accrual", (2) in subsection (c)(2) by inserting "President" vice "Secretary of State" in both places.

5306 Accept.

5307 Accept.

5308 Accept.

Chapter 4 - Procurement and Disposition

5401 Accept but recommend modification to subsection (a)(2) by deleting "on a cost-plus incentive fee contract basis". Suggest deletion of subsection (c).

5402 Accept with the following modifications: (1) in lieu of subsection (a)(1) insert "the need to maximize, to the extent practicable, the financing of commodities and services and defense articles and defense services of United States origin, and the participation of United States suppliers and contractors, particularly small and disadvantaged business;" and (2) by inserting at the end of subsection (a) the following: "Whenever the administering agency of the United States Government procures under this Act it will apply the standards and procedures of the Competition in Contracting Act of 1984, 41 U.S.C. 253 and 10 U.S.C. 2304, except as provided otherwise under the authority of 40 U.S.C. 474."

5403 Recommend that subsection (a) be deleted and that subsection (b) be amended by deleting "to pay" and substituting "or otherwise pay". In addition the reference to the Secretary of Commerce should be changed to the Secretary of Transportation.

5404 Accept but would recommend that subsection (a) be modified by deleting "In furnishing" and substituting "It is the sense of the Congress that, in furnishing".

5405 Accept.

5406 Accept but amend to include "chapters 2 and 6" in lieu of "chapter 6".

5407 Accept.

5408 Accept.

5409 Accept.

Chapter 5 - Personnel

5501 Administration currently has this section under review.

5502 Accept this provision but would modify to insert language contained in current law (FAA section 625(a)) regarding the authority of any agency carrying out functions under the Act to employ such personnel as may be necessary to carry out the Act's provisions and purposes. Also recommend deleting subsection (e).

5503 Accept but modify by deleting subsection (c) and substituting in lieu thereof "Contracts or assignments for such employment may be renewed annually."

5504 Accept but modify: (1) in subsection (a) by striking out "or the acceptance of compensation" through the end of that subsection, (2) in subsection (c)(1) by inserting after "Act" the phrase ", or may be detailed or assigned on a leave without pay status", and (3) in subsection (c)(2) by deleting "section 5505" and substituting "sections 5108 and 5505".

5505 Accept.

5506 Accept but insert "84" after "83" in subsection (b).

5507 Accept.

5508 Accept.

5509 Accept.

Chapter 6 - Definitions and Miscellaneous

5601 Remains to be reviewed in detail. However, recommend that in subsection (d)(7) replace "major non-NATO ally" and its definition with "friendly country" which we propose to define as "Australia, Egypt, Israel, Japan, Korea, and any other country so designated by the President for purposes of this Act and the Defense Trade and Export Control Act." (Substitute the term "friendly country" for "major non-NATO ally" each time the latter appears in the text.) The term "friendly country" more accurately describes the current designation of countries, which includes countries with whom the United States has no treaty alliance.

5602 Accept.

5603 Accept.

TITLE VI - Technical and Conforming Provisions

601 Accept.

602 Accept.

603 Remains to be reviewed.

604 Accept, but recommend deleting subsection (b).

605 To be added later.

606 To be reviewed.

2350J-April 21, 1989

Tab A

Sec. ____ . Statement of Policy.-(a) The Congress finds that it is in the national interest of the United States to support sustained, broad-based economic growth and economic and political stability in the world community, and national systems that encourage freedom, democracy, human dignity, economic opportunity, private property, and free markets and trade. The Congress further finds that economic growth and political pluralism are mutually reinforcing means to foster broad-based and sustained development and, through such development, to reduce the worst manifestations of pervasive poverty. The Congress further finds that a strong United States and world economy, United States economic leadership, and free trade are vital to economic development, stability, and peace. The Congress believes that to achieve economic growth, the United States must encourage and support the people of other countries in their efforts to build and reinforce the economic, political, and social institutions that will improve the quality of their lives, and that this must be achieved through a coordinated effort in economic cooperation and assistance, trade, investment, and debt, financial and commercial policy. The Congress believes that programs undertaken pursuant to this Act should have the following four main foreign economic policy objectives-

- (1) Growth.-Encouragement of broad-based economic growth.
- (2) Environmental sustainability.-Improved environmental, natural resource, and agricultural management.
- (3) Human resources development.- Human resource development aimed at improving the well-being of the poor and their capacity to become productive citizens.
- (4) Pluralism.-Promotion of political, social and economic pluralism.

(b) The Congress recognizes that since the enactment of the Foreign Assistance Act of 1961, progress has been made in addressing many of the manifestations of poverty in developing countries. Such progress can be measured, in part, by reduced rates of infant mortality, increased availability of family planning and health services, increased numbers of better educated citizens, increased availability of food, expanded participation of women in the development process, greater awareness of the need to protect the environment, and increased availability of physical infrastructure. The Congress is further aware that, while assistance from donors has been significant in fostering these achievements in developing countries, such assistance will never be sufficient, in and of itself, to sustain such progress over the long term. Similarly, while progress in addressing the manifestations of

poverty is necessary to the development process, it is not sufficient by itself to sustain that process over the long term. The Congress believes that development can be sustained and expanded to all elements of society in developing countries only as assistance recipients make progress in establishing the political, economic, and social environment necessary for the free and open participation of citizens in their country's development.

The Congress notes that the establishment of an environment necessary to provide the opportunity for sustained development will require difficult and far-reaching decisions, unique to each country, and that such decisions will often be beyond the resources of the developing country to support. The Congress further believes that, just as the development needs of a country are unique to the circumstances of that country, so assistance to help address those needs must be tailored to those circumstances. The Congress believes that, since economic growth and political pluralism are in the national interest of the United States, it is equally in our interest to provide support for those countries willing to undertake the long-term effort to achieve those goals.

Tab B

Sec. ____ . Authorization.—The President is authorized to furnish assistance to promote economic, social, and political development consistent with the objectives contained in section 102 of this Act. Such assistance may include the development and strengthening of the capabilities of institutions in the United States and other countries to address the objectives contained in section 102. Amounts appropriated under this section may be used, in addition to amounts otherwise available for such purposes, for the necessary operating expenses of the Agency.

Tab CProposed Modifications to Section 1209

1. Subsection (b)(4). Delete "subsection (e)," and insert in lieu thereof "subsection (e) and paragraph (2)(E) of subsection (h)) and reimbursements for payments made to discharge liabilities under subsection (h)." The modifications make it clear that fee income from guarantees and reimbursements for payments to discharge liabilities under the guaranty program are included in the Revolving Fund.

2. Subsection (c)(2). Suggest that this subsection be redrafted as follows:

"(2) Private Sector Activities Which May Be Supported.--Assistance under this section may be provided only to support financially viable private sector activities which are consistent with the basic objectives of United States economic assistance set forth in section 1102 and are the types of activities for which assistance may be provided under section 1201, and should emphasize projects that--

"(A) will have a demonstration effect;

"(B) will be innovative;

"(C) will maximize the development impact appropriate to the host country; and

"(D) are directed to making available to business enterprises, such as small businesses and cooperatives, necessary support and services which are not otherwise generally available to them."

The above language modifies somewhat current law requirements regarding the eligibility of activities under the Revolving Fund. While keeping the requirement that activities be consistent with the basic objectives of the Act, the section provides that project selection should emphasize the criteria contained in subparagraphs (A) through (D) rather than making that criteria mandatory.

3. Subsection (c)(3)(A). Substitute \$5,000,000 for \$3,000,000 and substitute "loan" for "project" in that subsection.

4. Subsection (c)(3)(B). Delete "Not" and insert in lieu thereof "Loans under this section may not provide"; and strike "may be provided under this section". Insert the "with loans" after "project assisted". The purpose of these suggestions is to clarify that the provisions apply to Revolving Fund loans only. To similar effect is section (h)(2)(C) in the Discussion Draft.

5. Subsection (e). Delete "The amount" and substitute "Except as provided in paragraph (2)(E) of subsection (h), the amount".

6. Subsection (f). Insert after "such termination" the phrase "that is not required for the guarantee reserve established pursuant to paragraph (2)(E) of subsection (h)".

7. Subsection (h)(1). Insert "(c)(2)" in lieu of "(c)".

8. Subsection (h)(2). Delete \$3,000,000 and substitute \$5,000,000.

9. Subsection (h)(2)(H). Delete "section" and insert "subsection".

10. Subsection (h)(4). Delete "losses" and insert "loans".

11. Subsection (h)(5). Delete the second sentence. We believe a 25% reserve is excessive and that a reserve equal to A.I.D.'s expected net liabilities on the loan guarantees outstanding is sufficient.

Tab D

Sec. . . . Humanitarian Assistance to the Victims of Civil Strife. - (a) Notwithstanding any other provision of law, funds authorized to be appropriated to carry out this chapter may be made available for the provision of food, transportation, medicine, clothing, or other humanitarian assistance to the victims of civil strife. For purposes of this section, victims of civil strife may include forces.

(b) None of the funds made available pursuant to subsection (a) may be made available for the purpose or with the effect of promoting, sustaining, or augmenting, directly or indirectly, the capability of the Khmer Rouge or any of its members to conduct military or paramilitary operations in Cambodia or elsewhere in Indochina.

(c) None of the funds made available pursuant to subsection (a) may be made available for purpose or with the effect of promoting, sustaining, or augmenting, directly or indirectly, the capability of the noncommunist resistance forces in Nicaragua.

Tab E

"(d) Authority of Inspector General.-(1) The Inspector General of the administering agency-

"(A) shall have full and independent authority to conduct audits, investigations, and inspections of all phases of the Corporation's programs and operations [all phases of the programs and operations of the Trade and Development Program] for the purpose of promoting economy, efficiency, and effectiveness, and detecting and preventing fraud and abuse; and

"(B) shall conduct all security activities of the Corporation [Trade and Development Program] relating to personnel and the control of classified material.

"(2) The Inspector General shall report to and be under the general supervision of the President of the Corporation [Director of the Trade and Development Program] with respect to activities undertaken pursuant to this subsection, provided that the President of the Corporation [Director of the Trade and Development Program] shall not prevent or prohibit the Inspector General from initiating, carrying out or completing any such activity in accordance with the duties, authorities, and responsibilities contained in the Inspector General Act of 1978, as amended, and any other applicable laws and regulations. The Inspector General shall be reimbursed by the Corporation [Trade and Development Program] for all expenses incurred by the Inspector General in connection with the Inspector General's responsibilities under this subsection.

"(3) The Corporation shall continue to be a "Federal entity" for purposes of the Inspector General Act of 1978, as amended, and the President of the Corporation shall be the "head of the federal entity" for purposes of that Act.

"(4) The annual report required under section 8E(h)(2) of the Inspector General Act of 1978, as amended, shall include information relating to activities of the Inspector General undertaken pursuant to this subsection."

Tab F

(j) The Bank is authorized to charge in connection with financing approved to support transactions referred to in subsection (a) of this section, fees and premiums commensurate, in the judgement of the Bank, with the Bank's administrative costs and risks covered by the Agency. Any amounts received by the Bank in excess of the estimated costs incurred by the Bank in administering such transactions shall be credited to the reserve fund referred to in subsection (d) of this section, shall be merged with the funds in such reserve, and shall be available for the purpose of payments by the Agency to the Bank for guarantees under subsection (a) of this section.

Tab G

Sec. ____ Advisory Boards. In order to assist the President in the administration of the programs authorized under this part, the President shall establish the following permanent advisory boards:

(1) an international food and agricultural development advisory committee, which shall be the successor to, and exercise duties and responsibilities similar to, the Board established pursuant to section 298 of the Foreign Assistance Act of 1961, as amended, as the President may determine;

(2) an advisory committee for private and voluntary organizations and cooperatives which, among other things, shall provide advice concerning the integration of the activities of United States and indigenous private and voluntary organizations and cooperatives into the implementation and planning of activities authorized by this part; and

(3) a private sector advisory committee which, among other things, shall advise the President regarding the participation of the United States and indigenous private sectors in achieving the objectives of this part.

Tab H

Amend section 3104(d)(1) to read as follows:

"(d)(1) Training services (including short-term refresher training) provided pursuant to this chapter may be conducted outside the United States only if-

"(A) such training involves (i) aviation security; (ii) bomb protection measures; (iii) crisis management; (iv) document screening techniques; (v) facility security; (vi) maritime security; (vii) post-blast investigation and tracing of lethal instruments; or (viii) VIP protection; or

"(B) the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate are notified, not less than thirty days prior to provision of the training, of the intent to engage in training outside the United States."

Amend section 3104(d)(3) to read as follows:

"(3) Employees of the Department of State shall not engage in the training of law enforcement personnel or provision of services under this chapter, except that employees of the Bureau of Diplomatic Security of the Department of State may provide training (including short-term refresher training) and services authorized by this chapter to law enforcement personnel in the following subjects: (i) bomb protection measures; (ii) crisis management; (iii) facility security; and (iv) VIP protection."

Tab I

Amend section 3215(a) by inserting the following:

"(3) As soon as possible after the submission of the report required under subsection (a)(1), designated representatives of the President, including the Assistant Secretary of State for International Narcotics Matters and appropriate representatives of such other agencies as may be designated by the President (which may include the Departments of Justice, Treasury, Defense, Transportation, and the Agency for International Development), shall be available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for consultaion and hearings with respect to the report and certifications made. The consultation shall review, but not be limited to, information on each major illicit drug producing and transit country, including-

"(A) a description of the nature of the illicit drug production and trafficking situation in each country;

"(B) an analysis of the climatic, geographic, political, economic, and social factors that affect illicit drug production and trafficking;

"(C) a description of the methodology employed to determine the maximum achievable reductions in illicit drug production; and

"(D) an analysis of any additional U.S. assistance that would be required to achieve those reductions."

Tab J

Amend section 3216 by adding the following subsection:

"(g) Waiver.—This section shall not apply with respect to a major drug-transit country for a given fiscal year if the President certifies to the Congress, during that fiscal year that—

"(1) section _____ of this Act (relating to money laundering) does not apply to that country;

"(2) the country previously was a major illicit drug producing country but, during each of the preceding two years, has effectively eliminated illicit drug production; and

"(3) the country is cooperating fully with the United States or has taken adequate steps on its own—

"(A) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States as described in subsection (b)(2) or a multilateral agreement which achieves the objectives of that subsection;

"(B) in preventing narcotic and psychotropic drugs and other controlled substances transported through such country from being sold illegally within the jurisdiction of such country to United States personnel or their dependents or from being transported, directly or indirectly, into the United States; and

"(C) in preventing and punishing bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts."

Tab K

Sec. ____ . Special Accounts for Host-Country Owned Local Currency.

(a) Special Account.—In cases where non-project assistance is furnished to a foreign country under title I under arrangements which may result in the generation of local currencies of that country, the President shall—

(1) require that such local currencies be deposited in a special account established by the government of the foreign country;

(2) enter into an agreement with the government of such country which sets forth the amount of the local currencies to be deposited and the terms and conditions under which such currencies may be utilized; and

(3) establish by agreement with such government the responsibilities of the administering agency and the government to monitor and account for deposits into and disbursements from such special account.

(b) Uses of Local Currencies.—As may be agreed upon with the government, local currencies deposited in a special account pursuant to subsection (a) shall be used only to carry out the purposes of title I or for the administrative requirements of the United States Government.

(c) Programming Accountability.—The administering agency shall take all appropriate steps to ensure that the equivalent of the local currencies disbursed from the special account are used for the agreed upon purposes pursuant to subsection (a).

(d) Definitions.—(1) For purposes of this section the term "non-project assistance" means any assistance provided for balance-of-payments or budget support purposes and includes commodity import program assistance and assistance in which the disbursement mechanism to the foreign country is in the form of a dollar disbursement of funds.

(2) For purposes of this section the term "generation" shall not be deemed to include the cost sharing contributions made by a foreign country pursuant to section 1206 of this Act.

(e) Report.—Not later than 6 months from the date of enactment of this Act, the President shall transmit to the Congress a report which describes the extent to which foreign owned local currencies are used for program and administrative purposes in each country for which they are available, and provides an assessment of the programmatic value of requirements to use such currencies for economic and administrative purposes.

2362J—April 21, 1989