



DEPARTMENT OF STATE

ACTION MEMORANDUM

#6

8105589

~~SECRET~~

DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: NOV 15 2017

S/S

March 3, 1981

Office of the Secretary of Defense 5 USC 552
Chief, RDD, ESD, WHIS
Date: 15 NOV 2017 Authority: EO 13526
Declassify: X Deny in Full: _____
Declassify in Part: _____
Reason: _____
MDR: 17 -M- 1048

TO: The Secretary
THROUGH: T - James L. Buckley
FROM: PM - Richard Burt ^{PB}
H - Alvin P. Drischler, Acting ^{PPD}
SUBJECT: FY 1982 Security Assistance Legislation

SUMMARY: The Administration must transmit an FY 1982 foreign assistance authorization bill to Congress shortly. We seek your approval for selected amendments to increase flexibility to use security assistance to promote our foreign policy and national security interests. We also recommend that we seek (1) repeal of the "Clark" amendment on Angola, (2) an amendment to permit FMS sales and commercial arms exports to Argentina while (3) generating or supporting Congressional initiatives to permit similar treatment for Chile. The Pakistan/Symington issue is the subject of a separate memo.

ANALYSIS OF ISSUES

A number of statutory provisions limit our ability to use security assistance to respond to unforeseen requirements and to promote our foreign policy and security objectives. A comprehensive revision of the legislation is long overdue. Because of time constraints, however, we believe our present efforts should focus on an ambitious set of incremental improvements.

EVALUATION/RECOMMENDATIONS

We recommend that you approve the package of functional amendments at TAB 1. While important in program terms, they do not raise major foreign policy questions (except perhaps for the broadened role of security assistance personnel overseas), although there will be problems on the Hill with several of them. Working levels at OMB and DOD are favorably disposed.

Approve _____

Disapprove _____

~~SECRET~~~~(CDS 3/2/87 Mantel, Robert)~~

Drawdown Authority

Defense recommends amending section 506(a) of the Foreign Assistance Act to increase the \$50 million ceiling on the President's authority to furnish emergency assistance to \$250 million. We do not believe that such an amendment is desirable or necessary. The President's section 614(a) authority could be used if necessary to raise the ceiling and a proposal of this sort could overload Congressional circuits, thereby risking our ESF and MAP contingency fund initiatives. DOD, specifically DSAA, is unlikely to reclama a negative decision. (Discussion at TAB 2.)

Approve State Position _____ Approve Defense Position _____

Angola

We recommend that we seek repeal of the "Clark Amendment" which prohibits assistance related to military or paramilitary operations in Angola unless the Congress specifically approves such assistance. This would be in keeping with our overall effort to increase flexibility and with our southern Africa strategy. Additional discussion is at TAB 3.

Approve _____ Disapprove _____

Argentina/Chile Prohibitions

We recommend that we seek to modify current prohibitions on security assistance to Argentina and Chile. This would be consistent with longstanding Executive Branch opposition to country-specific prohibitions and would increase our policy flexibility.

Two options should be considered:

1. Modify Argentina provision to permit FMS cash sales and commercial exports only, while being prepared to support, or, if necessary, generate a Congressional initiative to provide similar treatment for Chile.

2. Or, seek outright repeal of the Argentina provision to permit FMS sales, licensed commercial military exports, and funded assistance while being prepared to support or, if necessary, generate a Congressional initiative to provide similar treatment for Chile.

All bureaus favor the first option, since it would allow us to respond to Argentina and Chile's real needs -- FMS sales and commercial exports -- should we decide for policy reasons to do so. It would also generate less controversy on the Hill. (Discussion at TAB 4.)

RECOMMENDATION

That you approve option 1 above.

Approve _____ Disapprove _____

Alternatively, that you approve option 2 above.

Approve _____ Disapprove _____

DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: NOV 15 2017

Attachments:
As Stated.

Drafted: PM/SSP: *MP* Owens/RMantel *RM*
X25097 3/3/81

Clearances: AF - Mr. Walker
ARA - Mr. Bushnell
D/CT - Amb. Quainton
PM - Mr. Brown
T - Mr. Overmyer
ACDA - Mr. Finegold
EA - Ms. Clapp
EUR - Mr. Rehfeld
NEA - Mr. Mayhew
S/P - Mr. Feldstein
H - Mr. Thoms
L. - Mr. Borek
HA - Mr. Jacobs (Informed)

TD

Page determined to be Unclassified
Reviewed Chief, RDD, WHS
IAW EO 13526, Section 3.5
Date: NOV 15 2017

PROPOSED FUNCTIONAL AMENDMENTS TO CURRENT LEGISLATION
GOVERNING SECURITY ASSISTANCE AND ARMS TRANSFERS

1. Amend the Arms Export Control Act (AECA) to create a Special Defense Assets Account for materiel and services. This would enable DOD to procure in advance of FMS orders additional quantities of defense articles for which there is a high likelihood of emergency requirements but for which Service inventories are far below authorized acquisition objectives. This would enhance the President's ability to respond to emergency security assistance requirements while minimizing the adverse effect on the readiness of US Forces when their equipment is diverted to FMS clients. Capitalization of the account would be from foreign military sales recoupments (expected to be as much as \$350 million annually), or from appropriations if necessary, and the account would receive the proceeds from the sale of articles bought from the account.
2. Amend section 515 of the Foreign Assistance Act of 1961, as amended (FAA), to obtain greater flexibility to increase overseas security assistance management personnel and to relax such limitations on organizations' performing broad defense cooperation liaison functions in such areas as host nation support; joint exercises; rationalization, standardization, and interoperability (RSI); and defense negotiations.*
3. Amend sections 36(b), 36(c), 3(d), 25(d), and 28(a) of the AECA to double the dollar threshold of sales that require reporting to Congress from \$7M in major defense equipment (MDE) and \$25M in defense articles and services (non-MDE) to \$14M and \$50M respectively. Considering inflation since the AECA was first enacted, this change would enable the Administration and Congress to continue to focus their attention and efforts on the more significant sales proposals.
4. Amend sections 36(b), 36(c), and 3(d) of the AECA to exclude sales and third-party transfers to NATO, NATO member countries, Japan, Australia, and New Zealand from the requirements for prior notification to the Congress. Exclude third-party transfers to other recipients from such requirements if items to be transferred fall below the thresholds of \$14M (MDE) or \$50M (non-MDE).
5. Eliminate "legislative veto" over major commercial exports, and major FMS sales to our NATO allies, Japan, Australia and New Zealand. The current requirements have been an irritant to our allies, especially when added to normal procurement lead times. There has not been a controversial sale to these allies and enactment would facilitate NATO RSI.
6. Amend section 21(e)(2) of the AECA to limit the eligibility for waiver or reduction of nonrecurring cost recoupment and asset

use surcharges on foreign military sales to NATO, NATO members, Japan, Australia, and New Zealand. The revised law will encourage countries to procure equipment manufactured in the US by eliminating waiver of such charges as an incentive to seek to coproduce US developed weapons overseas. The proposal limits the waiver authority to countries where we have important standardization objectives.

7. Amend section 28 of the AECA to extend the due date to fifteen days after the quarter for the quarterly report to Congress on foreign government requests for price and availability estimates on major purchases of defense equipment and services. This would allow DOD to provide Congress with complete reports for the full quarter.

8. Amend section 43(b) to allow the use of FMS administrative funds, which are derived from collections from foreign governments, to augment MAP funds, which are appropriated by Congress, for the conduct of US Government security assistance expenses for which funds must be appropriated by Congress.

* H notes that the proposed broadening of the functions performed by security assistance personnel would raise policy concerns on the Hill and lead to controversy.

Page determined to be Unclassified
Reviewed Chief, RDD, WHS
IAW EO 13526, Section 3.5
Date: NOV 15 2017

CONFIDENTIALDrawdown Authority

Section 506(a) of the FAA authorizes the drawdown of DOD stocks to furnish up to \$50 million in military assistance in a fiscal year if the President determines and reports to the Congress that an "unforeseen emergency" requires such assistance, and that requirements cannot be met under any other authority, including the AECA.

The \$50 million limit on the use of this authority is likely to prove inadequate in the event of a major military emergency. DOD has therefore recommended that we seek an amendment to raise the ceiling to \$250 million.

We do not believe that such an amendment is desirable or necessary. We succeeded only last year in obtaining an increase in the ceiling from \$10 million to the present level (and only the year before in obtaining elimination of substantive provisions which rendered this authority unusable). A proposal for an additional five-fold increase would ensure close Congressional scrutiny of past uses of this authority (including some, such as that for Liberia last year, which were legally questionable), and could result in the reimposition of even more stringent limitations on its use. Moreover, we will have difficulty explaining the different purposes served by multiple contingency authorities and risk overloading Congressional circuits among both Republicans and Democrats if we also propose "non-emergency" MAP and ESF contingency funds.

In any event, the President could in a major emergency exercise his authority under section 614(a)(1) of the FAA to authorize the furnishing of assistance without regard to the \$50 million ceiling in section 506(a). We believe that the use of the section 614(a) authority for that purpose would be easier to defend than an amendment to increase that ceiling would be at this time.

DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: NOV 15 2017

CONFIDENTIAL

(SBS, 3/3/87, Robert D. Mantel)

~~SECRET~~

TAB 3

Angola Prohibition

We recommend that we seek repeal of section 118 of last year's authorization act, which substantially reenacted the former "Clark Amendment" in order to preclude any assistance related to military or paramilitary operations in Angola unless the Congress specifically authorizes such assistance by law.

This would be in keeping with our overall effort to increase flexibility and with our southern Africa strategy. Arguments used last year by some in Congress in opposition to altering the Clark Amendment -- that it would ruin chances for a Namibia settlement -- can be countered as we demonstrate our determination to obtain a settlement acceptable to all sides.

In explaining our action privately to key Africans, Europeans and selected Congressmen, we would stress that our initiative does not necessarily portend support for Savimbi and that any decision in this regard will depend greatly upon whether we can come to an agreement with the MPLA on the Cuban troop presence and an Angola government of national unity.

Publicly, we would justify the repeal on the grounds that the current law unnecessarily restricts the President. The HFAC Africa subcommittee will probably strongly oppose repeal, however, and it is not certain we can carry the full Committee. If the Committee does not report out a repeal provision, such a provision could be expected to be added to the bill during consideration on the floor and to have a reasonable chance of passage.

DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: NOV 15 2017

~~SECRET~~

~~(EDS, 3/3/84, Nantel, Robert D.)~~

~~SECRET~~

DECLASSIFIED IN FULL

Authority: EO 13526

Chief, Records & Declass Div, WHS

Date: NOV 15 2017

TAB 4

Argentina/Chile Prohibitions

Current law prohibits MAP, IMET, ESF, and FMS sales and financing, and commercial Munitions List exports to the Governments of Argentina and Chile. We recommend modifying these prohibitions in keeping with long-standing Executive Branch policy of opposition to country-specific prohibitions and to increase our policy flexibility toward these nations.

The issue is how best to do this given (1) the certainty of some opposition in the Congress to any changes, (2) a somewhat greater receptivity in the Congress to modifications for Argentina than for Chile and (3) our desire to follow an evenhanded policy with respect to both countries.

The following two options would seem best suited to our purposes:

1. Modify the prohibition on Argentina to permit FMS sales and licensed commercial exports only, while being prepared to support, or, if necessary, generate a Congressional initiative to provide similar treatment for Chile.

Pros:

-- Would focus our initial efforts on the less controversial Argentina problem.

-- Would allow us to meet Argentina and Chile's real needs -- FMS sales and commercial exports -- should we decide for policy reasons to do so.

-- Would likely generate less intense Congressional opposition than outright repeal.

Cons:

-- Would not allow IMET, FMS purchases of training at the lower IMET rates, ESF, or FMS financing unless the President were to exercise his extraordinary authority under section 614(a) of the FAA.

-- Because prohibition on funded assistance would remain, Argentina and Chile would continue to be discriminated against under US law and may be less willing to cooperate on issues of importance to us.

2. Seek outright repeal of the Argentina prohibition while being prepared to support or, if necessary, generate a Congressional initiative to provide similar treatment for Chile.

~~SECRET~~

Pros:

-- Would remove statutory prohibitions on US security assistance, thus removing any legislative discrimination against these countries.

-- Again would focus our initial efforts on the less controversial Argentina problem and avoid early confrontation on Chile.

Cons:

-- Would ensure a difficult fight on the Hill, particularly on Chile, by raising questions as to whether the Administration was planning to request funded assistance programs.

-- Neither Argentina nor Chile require IMET, ESF, or FMS financing since their economies are relatively healthy, and none is provided for in the FY 1982 budget.

Under either of these options, we will have to be prepared to counter substantial opposition on human rights grounds (the reason the limitations were enacted in the first place) and, in the case of Chile, on anti-terrorism grounds as well in view of the Letelier case. (Section 3(f) of the AECA prohibits FMS sales to any country which grants sanctuary from prosecution to international terrorists; public debate over whether or not this prohibition applies to Chile could complicate our efforts. Even if the country-specific prohibition on Chile were relaxed, we would still have to take section 3(f) into account in determining whether to approve sales to Chile.

H notes that it will not be easy to sell any amendment on Argentina on the Hill in light of recent arrests of leading human rights activists in Buenos Aires. To have any hope of success, we will have to provide quiet assurances to Members -- both Republicans and Democrats -- that the GOA intends to improve its human rights record.

DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: NOV 15 2017