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~~CONFIDENTIAL~~
032.3 Jones, Norvill
Staff Associate (Sen)

In reply
refer to: 10164/74

June 2, 1975

Mr. Norvill Jones
Staff Associate
United States Senate
Committee on Foreign Relations
Washington, D.C. 20510

Dear Mr. Jones:

Reference is made to your letter of October 10, 1974.

Attached is the answer to Question 3 relative to your study of arms policies and programs.

Also attached are responses to Questions 1(a)(b), 7 and 8 from your April 10, 1975 letter, same subject.

We hope to provide the remaining information which you requested, shortly.

Sincerely,

BY ~~XXXX~~

DOUGLAS J. SMITH
Special Assistant

DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: SEP 01 2017

Attachment

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Office of the Secretary of Defense
Chief, RDD, ESD, WHS
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Reviewed Chief, RDD, WHS
IAW EO 13526, Section 3.5
Date: SEP 01 2017

26 June 1972

Opinion of the General Counsel of the United States

Department of Defense

This opinion is rendered in satisfaction of the requirements of the Loan Agreement between the Government of Argentina (hereinafter called "Argentina") and the American Security and Trust Company, doing business under the laws of the District of Columbia (hereinafter called the "Bank") dated June 12, 1972 in an aggregate principal amount not to exceed \$7,500,000.

The Foreign Military Sales Act (P. L. 90-629), as amended, states, in pertinent part, as follows:

"SEC. 24. GUARANTIES. --(a) The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles and defense services to friendly countries and international organizations. Fees shall be charged for such guaranties.

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"(c) Funds made available pursuant to section 31 shall be obligated in an amount equal to 25 per centum of the contractual liability related to any guaranty issued under this section, and all the funds so obligated shall constitute a single reserve for the payment of claims under such guaranties. Any funds so obligated which are deobligated from time to time during any current fiscal year as being in excess of the amount necessary to maintain a fractional reserve of 25 per centum of the contractual liability under outstanding guaranties shall be transferred to the general

fund of the Treasury. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States."

"SEC. 31. AUTHORIZATION AND AGGREGATE CEILING ON FOREIGN MILITARY SALES CREDITS. --(a) There is hereby authorized to be appropriated to the President to carry out this Act not to exceed \$400,000,000 for the fiscal year 1972. Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this Act.

"(b) The aggregate total of credits, or participations in credits, extended pursuant to this Act (excluding credits covered by guaranties issued pursuant to section 24(b)) and of the face amount of guaranties issued pursuant to sections 24(a) and (b) shall not exceed \$550,000,000 for the fiscal year 1972, of which amount not less than \$300,000,000 shall be made available to Israel only."

"SEC. 33. REGIONAL CEILINGS ON FOREIGN MILITARY SALES. --(a) The aggregate of the total amount of military assistance pursuant to the Foreign Assistance Act of 1961, as amended, of cash sales pursuant to sections 21 and 22, of credits, or participations in credits, financed pursuant to section 24(b), of the face amount of contracts of guaranty issued pursuant to sections 24(a) and (b), and of loans and sales in accordance with section 7307 of title 10, United States Code, shall, excluding training, not exceed \$100,000,000 in each fiscal year for Latin American countries."

In accordance with the authority set forth in section 33(c) of the Foreign Military Sales Act, the President, on April 19, 1972 found that overriding requirements of the national security of the United States justified the waiver of the \$100,000,000 ceiling for fiscal year 1972 imposed by section 33(a) of the Act. (37 F.R. 9101).

The Foreign Assistance and Related Programs Appropriation Act, 1972 (P.L. 92-242) appropriates in Title II thereof \$400,000,000 for "expenses not otherwise provided for, necessary to enable the President to carry out the provisions of the Foreign Military Sales Act."

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The power of Congress to authorize guaranties pledging the full faith and credit of the United States in fulfillment of the purposes of programs authorized by statute is clearly established. Indeed, the Attorney General has held that Armed Services Housing Loan Guaranties executed by the Secretary of Defense, or his designee, pledge the full faith and credit of the United States, even where the statute authorizing such guaranties did not so state and where no appropriations are made in support of such guaranties. 41 Ops. Atty. Gen. 424. See also 42 Ops. Atty. Gen. Nos. 29, 30, and 31; 41 Ops. Atty. Gen. 138, 363 and 403.

Within the meaning of section 24(a) of the Foreign Military Sales Act, Argentina is a "friendly country". On July 22, 1969, the President found, pursuant to section 3(a)(1) of the Foreign Military Sales Act, that the sale of defense articles and defense services to Argentina will strengthen the security of the United States and promote world peace. This determination has not been revoked and is still in force.

Insofar as pertains to the authority of the Director, Defense Security Assistance Agency (herein called "DSAA"), on the 26th day of June 1972, to execute the guaranty required by the aforesaid Loan Agreement, the following facts are pertinent: On December 22, 1969, the President in section 1(e) of Executive Order 11501 expressly delegated his functions under section 24 of the Foreign Military Sales Act to the Secretary of Defense. By virtue of the Department of Defense Directive 5105.38, August 11, 1971, DSAA was established "for carrying out the responsibilities of the Secretary of Defense under . . . the Foreign Military Sales Act, as amended; and under Executive Orders and Directives Relating to the Administration of Military Assistance and Foreign Military Sales". Subsection V.A. of that Directive provides in part:

"A. Under its Director, the DSAA will perform the following functions:

- "1. Direct, administer, and supervise, within the policies established by the Assistant Secretary of Defense (International Security Affairs), approved Security Assistance plans and programs

* * *

"7. Manage governmental and government supported private sources of credit financing of foreign military sales. "

As of the 26th day of June 1972, the date on which the guaranty was issued, the President's delegation to the Secretary of Defense had not been superseded or revoked by a later Executive Order, and the above redelegation by the Secretary had not been superseded or revoked by a later DoD Directive or memorandum.

As of the close of business on the 26th day of June 1972, the date on which the guaranty was issued, the official records of the Comptroller of the DSAA disclose that the aggregate total of credits and the face amount of guaranties issued under the Act during the fiscal year 1973, including this guaranty, world-wide exclusive of Israel was less than \$250,000,000.

Having examined the Loan Agreement referred to above, the form of the Promissory Note attached thereto as an exhibit, and the Guaranty Agreement duly entered into between the United States of America and the Bank, it is my considered opinion that the Department of Defense has full power, authority, and legal right to execute, deliver and perform the Guaranty. All authorizations and determinations required for the making and performance of the Guaranty by the United States have been obtained or made. The Guaranty has been executed in accordance with and pursuant to the terms and provisions of the Act, and the Department of Defense has not, in issuing the Guaranty, exceeded the maximum amount of guaranties authorized to be issued under the Act; the Guaranty has been duly executed and delivered by a duly authorized representative of the Department of Defense, namely, the Director, Defense Security Assistance Agency; and the Guaranty constitutes the valid and legally binding obligation of the United States, enforceable in accordance with the terms thereof, and backed by the full faith and credit of the United States.

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(Signed) J. Fred Buzhardt

J. FRED BUZHARDT

CC: GC
Master Chron

Subject: Agreements-Argentina
Circulating AGREEMENTS - GUARANTY
NEG-ARGENTINA-SALES



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

8 JUL 1974

Opinion of the General Counsel of the United States

Department of Defense

This opinion is rendered in satisfaction of the requirements of the Loan Agreement between the Government of Argentina (hereinafter called "Argentina") and the Morgan Guaranty Trust Company of New York, a banking corporation duly organized under the laws of the State of New York (hereinafter called the "Bank") dated 27 June 1974, in the aggregate principal amount of \$16,000,000.

The Foreign Military Sales Act (P. L. 90-629), as amended, states, in pertinent part, as follows:

"SEC. 24. GUARANTIES. --(a) The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles and defense services to friendly countries and international organizations. Fees shall be charged for such guaranties.

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"(c) Funds made available to carry out this Act shall be obligated in an amount equal to 25 per centum of the principal amount of contractual liability related to any guaranty issued under this section, and all the funds so obligated shall constitute a single reserve for the payment of claims under such guaranties. Any funds so obligated which are deobligated from time to time during any current fiscal year as being in excess of the amount necessary to maintain a fractional reserve of 25 per centum of the principal amount of contractual liability under outstanding guaranties shall be transferred to the general fund of the Treasury. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States."

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"SEC. 31. AUTHORIZATION AND AGGREGATE CEILING ON FOREIGN MILITARY SALES CREDITS. --(a) There is hereby authorized to be appropriated to the President to carry out this Act not to exceed \$325,000,000 for the fiscal year 1974. Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this Act.

"(b) The aggregate total of credits, or participations in credits, extended pursuant to this Act and of the principal amount of loans guaranteed pursuant to section 24(a) shall not exceed \$730,000,000 for the fiscal year 1974, of which amount not less than \$300,000,000 shall be made available to Israel only."

The Foreign Assistance and Related Programs Appropriation Act for fiscal year 1974 (P. L. 93-240) appropriates in Title II thereof \$325,000,000 for expenses not otherwise provided for, necessary to enable the President to carry out the provisions of the Foreign Military Sales Act, provided, "That of the amount provided for the total aggregate credit sale ceiling during the current fiscal year, not less than \$300,000,000 shall be allocated to Israel".

The power of Congress to authorize guaranties pledging the full faith and credit of the United States in fulfillment of the purposes of programs authorized by statute is clearly established. Indeed, the Attorney General has held that Armed Services Housing Loan Guaranties executed by the Secretary of Defense, or his designee, pledge the full faith and credit of the United States, even where the statute authorizing such guaranties did not so state and where no appropriations are made in support of such guaranties. 41 Ops. Atty. Gen. 424. See also 42 Ops Atty. Gen. Nos. 29, 30, and 31; 41 Ops. Atty. Gen. 138, 363 and 403.

Within the meaning of section 24(a) of the Foreign Military Sales Act, *Argentina* is a "friendly country". On January 2, 1973, the President found; pursuant to section 3(a)(1) of the Foreign Military Sales Act, that the sale of defense articles and defense services to *Argentina* will strengthen the security of the United States and promote world peace. This determination has not been revoked and is still in force.

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Insofar as pertains to the authority of the Director, Defense Security Assistance Agency (herein called "DSAA"), on the 28th day of June 1974, to execute the guaranty required by the aforesaid Loan Agreement, the following facts are pertinent: On December 22, 1969, the President in section 1(e) of Executive Order 11501 expressly delegated his functions under section 24 of the Foreign Military Sales Act to the Secretary of Defense. By virtue of the Department of Defense Directive 5105.38, August 11, 1971, DSAA was established "for carrying out the responsibilities of the Secretary of Defense under . . . the Foreign Military Sales Act, as amended; and under Executive Orders and Directives Relating to the Administration of Military Assistance and Foreign Military Sales". Subsection V.A. of that Directive provides in part:

"A. Under its Director, the DSAA will perform the following functions:

- "1. Direct, administer, and supervise, within the policies established by the Assistant Secretary of Defense (International Security Affairs), approved Security Assistance plans and programs

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- "7. Manage governmental and government supported private sources of credit financing of foreign military sales."

As of the 28th day of June 1974, the date on which the guaranty was issued, the President's delegation to the Secretary of Defense had not been superseded or revoked by a later Executive Order, and the above redelegation by the Secretary had not been superseded or revoked by a later DOD Directive or memorandum.

As of the close of business on the 28th day of June 1974, the date on which the guaranty was issued, the official records of the Comptroller of the DSAA disclose that the aggregate total of the credits and of the 25 per centum guaranty reserve for guaranties issued under the Act during fiscal year 1974, including this guaranty, world-wide exclusive of Israel, was less than

\$325,000,000, and that the aggregate total of credits, extended pursuant to this Act, and of the principal amount of loans guaranteed pursuant to section 24(a), exclusive of Israel, does not exceed \$430,000,000.

Having examined the Loan Agreement referred to above, the form of the Promissory Note attached thereto as an exhibit, and the Guaranty Agreement duly entered into between the United States of America and the Bank, it is my considered opinion that the Department of Defense has full power, authority, and legal right to execute, deliver and perform the Guaranty. All authorizations and determinations required for the making and performance of the Guaranty by the United States have been obtained or made. The Guaranty has been executed in accordance with and pursuant to the terms and provisions of the Act, and the Department of Defense has not, in issuing the Guaranty, exceeded the maximum amount of guaranties authorized to be issued under the Act; the Guaranty has been duly executed and delivered by a duly authorized representative of the Department of Defense, namely, the Director, Defense Security Assistance Agency; and the Guaranty constitutes the valid and legally binding obligation of the United States, enforceable in accordance with the terms thereof, and backed by the full faith and credit of the United States.

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Martin R. Hoffmann

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