



## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-165731

DATE: OCT 5 1976

115

MATTER OF: Inspector General, Foreign Assistance -  
Reviews of Foreign Military Sales

DIGEST: Military Assistance Program appropriations may be charged with expenses of Inspector General, Foreign Assistance, incurred in connection with reviews of foreign military sales program, in view of congressional awareness of longstanding administrative practice to do so, and absence of legislative history construing funding provision of section 624(d)(7) of Foreign Assistance Act of 1961, as amended, as providing alternative method of funding.

This decision concerns the use of Military Assistance Program (MAP) appropriations to fund reviews of Foreign Military Sales activities conducted by the State Department's Inspector General, Foreign Assistance. Submissions have been received from both the Director, Defense Security Assistance Agency (DSAA), Department of Defense (DOD), and the Under Secretary for Security Assistance, Department of State, setting forth their conflicting views on this matter.

The position of Inspector General, Foreign Assistance, was established pursuant to section 624(e) of the Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424, 447, which redefined the responsibilities attributed to a similar office originally established pursuant to the Mutual Security Act of 1959, 73 Stat. 246, 253. The duties and responsibilities of the Inspector General were set forth in section 624(e)(2) and (3) of the Foreign Assistance Act of 1961 as follows: 22 USC 2384(d) (1976)

"(2) The Inspector General, Foreign Assistance, shall report directly to the Secretary of State and shall have the following duties and responsibilities:

\* Redesignated by section 302(b) of the Foreign Assistance Act of 1962, Pub. L. No. 87-565, 76 Stat. 262, as section 624(d). Section 624(d) is now codified at 22 U.S.C. § 2384(d) (1970).

"(A) He shall arrange for, direct or conduct such reviews, inspections and audits of programs being conducted under part I of this Act and of the Peace Corps as he considers necessary for the purpose of ascertaining the efficiency and the economy of their administration, their consonance with the foreign policy of the United States, and the attainment of their objectives.

"(B) For the purpose of ascertaining the extent to which programs of assistance being carried out under part II of this Act and the Agricultural Trade Development and Assistance Act of 1954, as amended, are in consonance with the foreign policy of the United States, are aiding in the attainment of the objectives of this Act, and are being carried out consistently with the responsibilities with respect thereto of the respective United States chiefs of missions and of the Secretary of State, as well as the efficiency and the economy with which such responsibilities are discharged, he shall arrange for, direct or conduct such reviews, inspections and audits of programs of assistance under part II of this Act and the Agricultural Trade Development and Assistance Act of 1954, as amended, as he considers necessary.

"(3) The Inspector General, Foreign Assistance, shall maintain continuous observation and review of programs with respect to which he has responsibilities under paragraph (2) of this subsection for the purpose of:

"(A) determining the extent to which such programs are in compliance with applicable laws and regulations;

"(B) making recommendations for the correction of deficiencies in, or for improving the organization, plans or procedures of, such programs; and

"(C) evaluating the effectiveness of such programs in attaining United States foreign policy objectives and reporting to the Secretary of State with respect thereto." (Emphasis added.)

At that time, foreign military sales authority was combined with grant assistance authority under part II, chapter 2 of the Act ("military assistance"), 75 Stat. 434, 435-38.

Section 302 of the Foreign Assistance Act of 1967, Pub. L. No. 90-137, 81 Stat. 445, 460, deleted the words "of assistance" in subparagraph 624(d)(2)(B). As explained in H.R. Rep. No. 551, 90th Cong., 1st Sess. 54 (1967):

"Section 302(b) makes a technical change in section 624(d)(2)(B) of the act which relates to the responsibilities of the Inspector General, Foreign Assistance, to make clear that it applies to the military sales program as well as the military assistance program."

It is clear, therefore, that the Inspector General was originally given authority to conduct reviews of the Foreign Military Sales program.

A separate authorization for the sales program was enacted by the Foreign Military Sales Act of 1968, Pub. L. No. 90-629, 82 Stat. 1320, which repealed most of the provisions in the Foreign Assistance Act of 1961 referring to sales. See § 45(a), 82 Stat. 1327. However, section 624 of the 1961 Act, supra, was neither repealed nor amended so as to no longer apply to military sales. Moreover, section 45(c) of the Foreign Military Sales Act, 82 Stat. 1327, provides as follows:

"(c) References in law to the provisions of law repealed by subsection (a) of this section shall hereafter be deemed to be references to this Act or appropriate provisions of this Act. Except for the laws specified in section 44, no other provision of law shall be deemed to apply to this Act unless it refers specifically to this Act or refers generally to sales of defense articles and defense services under any Act."

The Under Secretary of State for Security Assistance also points out in this regard that provisions of section 622 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2382<sup>1</sup>(1970), which assign to the Secretary of State certain coordination and supervisory responsibilities for foreign assistance programs, were repeated, in substance, in section 2 of the Foreign Military Sales Act, 22 U.S.C. § 2752<sup>1</sup>(1970). Thus section 2(b) of the Sales Act provides:\*

"Under the direction of the President, the Secretary of State, taking into account other United States activities abroad, such as military assistance, economic assistance, and food for freedom, shall be responsible for the continuous supervision and general direction of sales under this Act, including, but not limited to, determining whether there shall be a sale to a country and the amount thereof, to the end that sales are integrated with other United States activities and the foreign policy of the United States is best served thereby."

He goes on to observe:

"In the absence of any specific indication in the Foreign Military Sales Act or its legislative history that Congress intended to terminate the ability of the Inspector General to inspect foreign military sales activities and to draw on military assistance funds as a source of reimbursement, we believe section 45(c) of the Sales Act should be construed as authorizing the continuance of the previous administrative practice of using such funds for that purpose. Such an interpretation of section 45(c) would give effect to the obvious intent of Congress as

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\* Section 2(b) of the Act was amended by Pub. L. No. 94-329, § 212(a)(2), 90 Stat. 745, to refer to exports as well as sales.

expressed in section 2 of the same Act that the Secretary of State remain able to provide continuous supervision and general direction over sales activities. It would also accord with the obvious intent of the Foreign Assistance Act of 1961 and the 1967 amendment that the range of programs subject to review by the Inspector General be coextensive with those programs for which the Secretary of State has responsibilities of supervision and direction."

Based on the foregoing considerations, it is our view that the military sales program remains within the coverage of section 624(d)(2)(B) of the Foreign Assistance Act of 1961, as amended.

Financing of the activities of the Inspector General is provided for in section 624(d)(7) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2384(d)(7)(1970), which reads, in pertinent part, as follows:

"Expenses of the Inspector General, Foreign Assistance, with respect to programs under subchapter I or II of this chapter, and section 290f of this title, and the Latin American Development Act, as amended, and the Peace Corps shall be charged to the appropriations made to carry out such programs, and with respect to programs under the Agricultural Trade Development and Assistance Act of 1954, as amended, shall be charged to funds available under the authority of this chapter: \* \* \*."

This provision originated as section 622(e)(7) of H.R. 8400, 87th Congress, and was explained by the House Foreign Affairs Committee as follows:

"Care has been taken to prevent the Inspector General, Foreign Assistance, and his organization from being dependent on the administrative budget of any of the agencies under his jurisdiction. He is authorized to draw, within a limit of \$2

million a year, on any funds made available under this act or provided in any legislation for the Peace Corps to cover his expenses. The committee recognizes the inherent conflict of interest between those administering programs and the Inspector General, Foreign Assistance, and believes that this method of financing is essential to prevent the curtailment of the Inspector General's travel funds or other operations to the detriment of his effectiveness. \* \* \*

H.R. Rep. No. 851, supra, at 77-78.

We are unaware of any other references in the legislative history substantially construing the statutory language, which, by its terms, provides that expenses of the Inspector General are to be charged " \* \* \* to the appropriations made to carry out [foreign assistance or sales] programs \* \* \*." The report does not use this language, but instead provides that the expenses of the subject reviews are to be charged to " \* \* \* any funds made available under [the Foreign Assistance] Act \* \* \*."

This anomaly can be explained by reference to the fact that both military sales and assistance activities, as noted above, were originally part of the same Act--i.e., the Foreign Assistance Act. The statutory mandate to charge expenses of the Inspector General to appropriations made to carry out the subject programs, whether military assistance or sales, would therefore require, prior to enactment of the Foreign Military Sales Act, that MAP funds be charged, as indicated in the Report. The legislative history of the Foreign Military Sales Act is silent as to whether, upon enactment, reviews of foreign military sales were to continue to be funded through MAP appropriations.

However, as noted above, reimbursements for reviews of foreign military sales activities have regularly been made from MAP funds, and funds for such reimbursement have regularly been included in the annual budget presentations for the Security Assistance Program. No change in funding was made in 1968 when the military sales program was removed from the Foreign Assistance Act. No additional funds have been provided specifically for reviews of sales activities, despite the statutory requirement that such reviews be made. See S. Rep. No. 94-704, 38 (1976) on the Foreign Assistance and Related Programs Appropriation Bill, 1976, ultimately enacted as Pub. L. No. 94-330, 90 Stat. 771, 780.

B-165731

In view of the Inspector General's continued cognizance of the sales program under section 624(d)(2)(B) of the Foreign Assistance Act, noted above, as well as the longstanding practice to fund reviews of foreign military sales programs with MAP appropriations and the absence of legislative history specifically indicating that such reviews were to be otherwise funded, we conclude that MAP appropriations are available generally for expenses incurred by the Inspector General, Foreign Assistance, for carrying out reviews of foreign military sales activities.

Deputy R. F. KENNEDY  
Comptroller General  
of the United States