ADS Mandatory Reference: N/A
ADS Supplementary Reference: 324

SUSPENSION OR TERMINATION OF ASSISTANCE (COMMODITIES)
(**formerly HB 15, Chapter 11**)

11A. **Introduction**

Circumstances may arise in relation to a particular cooperating country which either make the attainment of assistance objectives improbable or make the continuation of assistance contrary to U.S. policy. The purpose of this chapter is to provide guidance with regard to commodities and commodity-related services in the event AID assistance is suspended or terminated. This chapter discusses the actions required to terminate AID agreements, vest title to commodities ordered and in transit, dispose of the commodities so vested, and make settlements with suppliers, carriers, and insurers. A decision to suspend or terminate assistance obviously will have many ramifications and will require actions in a variety of areas outside the limited scope of this chapter. Also, since a suspension of assistance is, by its nature, an extraordinary or unique event, reaction must be flexible and tailored to the occasion. The guidance contained in this chapter is, therefore, not to be considered as imposing restrictions on the use of other available options.

11B. **Authority**

1. **Termination**

AID project and nonproject assistance agreements provide for suspension or termination of assistance under specified circumstances. While individual assistance agreements will need to be consulted to verify the exact nature of AID's rights to suspend or terminate assistance in particular cases, the model language for loan and grant agreements appears in Handbook 3, **Project Assistance**, and Handbook 4, **Nonproject Assistance**.

2. **Vesting**

a. Section 605 of the FAA states: "Any commodities... procured to carry out this Act shall be retained by, or upon reimbursement, transferred to, and for the use of, such agency of the United States Government as the President may determine in lieu of being disposed of to a foreign country or international organization, whenever in the judgement of the

President the best interests of the United States will be served thereby or whenever such retention is called for by concurrent resolution...."

b. The Administrator has been delegated authority to vest in AID the title to AID-financed commodities.

c. For programs subject to the provisions of AID Regulation 1 (Appendix A of this Handbook), Section 201.43, 201.44, 201.45, and 201.46 set forth AID's rights and responsibilities with regard to diversion of shipments and vesting of title.

d. In the case of projects, it is AID policy that contracts providing for the procurement of equipment or materials, whether under a fixed-price contract or otherwise, shall include a provision subjecting the contractor or supplier to the diversion and vesting rights of AID specified in loan/grant agreements, letters of implementation, or other related documents. The standard language appears in Chapter 3 of Handbook 11.

3. **Disposal**

Section 605 of the FAA states: "...Any commodities...so retained may be disposed of without regard to provisions of law relating to the disposal of property owned by the United States Government, when necessary to prevent spoilage or wastage of such commodities...or to conserve the usefulness thereof...." The Assistant to the Administrator for Management has the authority to dispose of Agency property pursuant to this Section. The authority is further delegated in accordance with Agency practice to other AID officials under 1100 series of redelegations of authority. (See Handbook 5.) Before the Section 605 authority can be used, a determination must be made that it is necessary to dispose of the retained property in order to prevent spoilage or wastage or to conserve the property's usefulness. Once this determination is made, it is passed on to the Office of Procurement (M/SER/OP) or any other office that is made responsible for the specific disposal, for implementation. Such a determination and appropriate delegations to the office which will be responsible for disposal are required before disposal action may be initiated.

11C. **Termination and Vesting Actions**

1. **General**

The type of action which is appropriate in order to control commodity movements to the cooperating country will vary depending upon the speed and completeness with which AID wishes to suspend or terminate assistance. At one extreme, a gradual termination might be limited to restrictions on the issuance of any new L/COM's or other implementing documents, thereby blocking new procurement while permitting procurements already under way to be completed. At the other extreme, the urgency of the situation might require diverting commodities already enroute to the cooperating country. The measures taken should be appropriate to AID's objectives in the suspension or termination of assistance.

2. Suggested Actions

Suggested below are actions to be taken or considered when the intent is to cut off the movement of commodities to the cooperating country as completely and as swiftly as possible. If something less than a complete and immediate cutoff is desired, the steps taken should be modified accordingly. The order of the proposed actions is not necessarily intended to indicate priorities, since the aim would be to do everything as soon as possible. A vesting order by the Administrator must be issued before some of these actions may be undertaken. M/SER/PPE has on file and will make available examples of a vesting order and other vesting or disposition actions as well as samples of many documents discussed in this chapter. Appendix 11A lists these file materials. The responsibilities for the various actions will follow the functional responsibilities of the AID offices involved, but in practice what is likely to emerge is a team effort involving principally the Offices of the General Counsel, Office of Procurement, and Financial Management under the leadership of the pertinent Geographic Bureau. Appropriate actions include the following:

a. Identify the agreements under which commodities are being financed, verify AID's precise suspension rights under each agreement, ascertain the funds remaining available for commodities in each agreement, and determine whether all or only some of the agreements are to be made subject to the decision to suspend.

b. Take formal action to suspend or cancel commitment documents, and give the Borrower/Grantee (B/G) prompt notice of this action.

c. Contact by telephone (confirming by telegram) U.S.

banks holding L/COM's and instruct them not to issue, advise, confirm, amend, extend or review any letters of credit under designated L/COM's. Banks should also be instructed to furnish M/SER/OP, by telephone (confirmed by telegram), the balance available for cancellation in each L/COM. If required, L/COM banks should be requested to furnish copies of outstanding letters of credit.

d. Stop approving Commodity Approval Applications (form AID 11) under designated assistance agreements. Use forms AID 11, as they are submitted, as a method of identifying suppliers who may have outstanding contracts. Review recently approved forms AID 11 to identify suppliers who may not yet have made shipment.

e. Contact identified suppliers by telephone or telegram, informing them that AID is considering invoking its rights under AID Regulation 1 (Sections 201.43 through 201.46) or corresponding rights appearing in contracts under project assistance. Suppliers should be requested to furnish M/SER/OP with a report of the status of the commodities under each of their letters of credit. They should be instructed, pending further advice from AID, to halt manufacture of custom items, hold any finished items not yet in transit, and instruct freight forwarders to hold goods in warehouses rather than permitting them to be loaded on vessels.

f. Consideration should be given to diversion of vessels carrying AID-financed commodities to the cooperating country. AID's rights to require diversion stems from the inclusion in charter parties, bills of landing, or other ocean shipping documents of a diversion clause substantially similar to that appearing in Section 201.43 of AID Regulation 1. Such clause is not routinely put in shipping documents, but consideration should be given to including it when the possible need to divert cargoes is anticipated. Even in the absence of such a clause, carriers, particularly U.S. flag ships, may be responsive to a diversion request from the U.S. Government. Vessels carrying AID-financed commodities under charter terms can be identified readily, since charters must be approved by M/SER/OP. Diversion of these cargoes is both important and feasible. In the case of liner movements, an examination of recent documents submitted by suppliers for payment might identify liners still en route with AID-financed cargo. A more direct source of information might be the shipping lines known to furnish liner service between the United States or other eligible source countries and the cooperating country. A decision to divert requires determination of an alternative destination. In selecting an alternative destination, it is important to consider both the disposition of the cargo and the availability of freight adjustment under applicable tariffs. Diversion may be unnecessary where the cooperating country is landlocked. The goods can be offloaded at the usual port and held there pending disposition.

g. Instruct the USAID in the cooperating country to take action as appropriate and feasible to suspend procurement under local contracts and to report to AID/W on the status of such contracts with recommendations for further actions. Request the USAID to furnish identification of and status report on USAID-issued PIO/C's.

h. M/SER/OP should contact GSA, other U.S. agencies, and commercial procurement agents that are procuring for B/G programs and instruct them to suspend procurement actions, to pass necessary instructions to suppliers and to report to AID/W on the status of individual procurements.

i. Special treatment may be necessary in connection with P.L. 480 and voluntary agency shipments if humanitarian or other considerations make a full, immediate cutoff of assistance impossible or undesirable. The Office of Food for Peace will need to explore with the Department of Agriculture the feasibility of suspending or terminating all or specific segments of programs under its agreement with the B/G. Attention will also have to be given to commodities being made available through the Food and Agriculture Organization of the United Nations, UNICEF, voluntary foreign agencies, and Foreign Disaster Assistance.

11D. **Disposition of AID-vested Commodities**

1. **General**

a. In a brief chapter such as this, no attempt can be made to anticipate the many problems which will arise after the immediate objective of cutting off the movement of commodities to the cooperating country has been achieved. There will inevitably be problems of what to do with the commodities whose movement was disrupted and what the financial settlements will be with parties who have been injured by the overriding of contracts. In some cases, it may prove to be in the interest of all concerned, including the U.S. Government, to let some commodity movements resume after there has been an opportunity to evaluate the consequences. Appropriate responses can be found only by reviewing the actual situation.

b. The balance of this chapter contains guidance based upon AID's experience gained during actual closeouts. The guidance is written with the assumption that the Office of Procurement has been given the responsibility for handling the disposal of vested commodities.

2. **Commodity Inventories**

The Office of Procurement must arrange to have inventories made and reported as soon as possible so that the content of all vested shipments can be examined in order to establish commodity descriptions, exact quantities, and prices. Shipments in U.S. ports should be inventoried in the same manner as those overseas.

3. **Commodity Categories**

a. AID-vested commodities fall into three general categories:

(1) Commodities which must be disposed of expeditiously to prevent wastage or spoilage or to conserve their usefulness,

(2) Domestic excess property, and

(3) Foreign excess property.

b. The distinction between foreign and domestic location has important implications for disposition of the commodities. The General Services Administration (GSA) has little, if any, interest in overseas property; however, GSA has substantial interest in the way in which disposition is made of AID-vested commodities located in the United States.

c. Commodities subject to waste or spoilage derive a special status through provisions of Section 605(a) of the Foreign Assistance Act, and GSA asserts no jurisdiction over such AID-vested property, whether it is located in the United States or overseas.

4. **Disposition Priorities**

The priorities for disposition of AID-vested commodities in each general category are as follows:

a. **Commodities Subject to Wastage or Spoilage**

Disposition is made by whatever method is fastest and most advantageous pursuant to good business practices. This applies to commodities located in the United States and overseas.

b. **Commodities Located In United States**

(1) Use in other AID programs.

(2) Limited negotiated sales to original suppliers or producers, after consultation with GSA.

(3) Sales on a reimbursement basis to other Government agencies, with GSA assistance.

(4) If GSA does not agree on reimbursement, referral to GSA for disposition under provisions of the Federal Property and Administration Services Act.

c. **Commodities Located Overseas**

(1) Use in other AID programs.

(2) Solicitation of offers from original U.S. suppliers, or from other prospective U.S. buyers on either a formal or informal basis, whichever method is likely to result in the highest return. This may involve direct communication addressed to selected prospective buyers, or advertisement in appropriate publications.

(3) Public sales by formal bid, advertised in the United States as well as appropriate overseas locations.

5. **Preliminary Arrangements and Procedures**

a. **Staffing**

(1) Because of the need to divert shipments to safe ports when assistance is terminated, vested commodities may be located in numerous ports overseas as well as in the United States. It may be necessary to assign AID personnel to many of those locations to undertake vesting and disposal actions. Personnel requirements will vary depending upon the number of shipments located in each port (e.g., based on experience, five hundred shipments in one port required four AID employees, one of whom was a secretary, while in another port two employees were required to dispose of sixty shipments). Personnel with commodity and contract management experience should be given priority for such assignments. In each location one AID

employee must be given contract authority in order to arrange warehouse or other storage space, office space, drayage, etc., and to sign sales contracts.

(2) When personnel are sent abroad to be directly responsible to M/SER/OP (when the disposal responsibility is so delegated), it is desirable to establish Regional Commodity Management Offices (RCMO's). Cables and other communications may then be routed to such office without creating confusion within the USAID or U.S. Embassy or Consulate, which will be called upon to provide some degree of administrative support. Staff requirements may best be arranged through temporary assignments from M/SER/OP or through personnel from the USAID(s) being closed out or reduced in size. Within 10 working days after the establishment of an RCMO or similar activity where it appears the estimated value of the commodities and claims will exceed $100,000, the nearest Office of the Inspector General should be contacted to assure that the proposed disposal arrangements will provide adequate controls.

b. **Additional Services**

(1) AID may seek the assistance of GSA and Defense Logistics Agency in conducting overseas sales of surplus property; however, the RCMO or USAID personnel will be responsible for overseas sales arrangements.

(2) Where large volumes of vested commodities are located in overseas ports, use of the services of a port authority or similar organization may be sought in arranging sales. Such organizations are often experienced in handling sales of distressed merchandise and may be in a good position to assist. Fees for such services should be negotiated.

c. **Preliminary Actions**

(1) The first task confronting the personnel charged with closing out the delivery of AID-financed commodities is to contact the ocean carriers' local agents in order to obtain copies of all bills of lading presumed to cover AID-financed or AID-owned shipments. When shipments are identified, the carriers need to be informed that title has been vested in AID, even though their U.S. or home offices may have already

alerted them in response to instructions from AID. Many, if not all, ocean carriers may insist upon some written indemnity prior to release of shipments to AID. Subject to prior approval by the GC in AID/W, such indemnity may be routinely issued by the RCMO or USAID upon request by the carriers' agents. Thereafter, warehousing arrangements must be made or understanding reached that shipments remain where already warehoused to be released only upon written authority form the RCMO or designated USAID official.

(2) Commodities unloaded in the United States should be moved into the nearest GSA warehouse(s) after obtaining concurrences from GSA. They should be held there while M/SER/OP disposes of commodities subject to spoilage or wastage or determines if the commodities can be used by other AID activities.

6. Disposition Procedures

Procedures for disposal of vested commodities, whether located in the United States or overseas, are discussed below. All disposal arrangements should follow adequate audit trace principles.

a. Commodities Subject to Wastage or Spoilage

(1) Property subject to wastage or spoilage derives a special status through provisions of Section 605(a) of the Foreign Assistance Act. GSA asserts no jurisdiction over such AID-vested property whether it is located in the United States or overseas.

(2) It is the responsibility of M/SER/OP to identify commodities which are subject to wastage or spoilage and commodities which should be quickly disposed of to conserve their usefulness. After a determination has been made by the appropriate official that these commodities are subject to the provisions of Section 605(a), M/SER/OP is responsible for disposing of them. RCMO's or responsible USAID personnel should be instructed to seek out such shipments, report them to M/SER/OP and send in inventories promptly. In this category are such commodities as dyestuffs, pharmaceuticals, pesticides, and various chemicals which might deteriorate due to heat or cold or which readily absorb moisture. Further, it should be determined whether commodities will be stored outside. Any prolonged outside storage of

commodities which may become damaged by water, sun, etc., should be avoided. To conserve the usefulness of such commodities, disposal should be initiated promptly.

(3) Because commodities in this category may be disposed of without regard to provisions of law, no distinction between U.S. and overseas procedures is required. Although there is no requirement that these commodities be referred for use in other AID activities, this should be considered. Methods of disposal should be tailored to fit the circumstances: sell back to original producers of suppliers, issue formal IFB's for sale, negotiate sales with commercial firms.

b. **Use in Other AID Programs**

(1) The first priority in disposing of AID-vested commodities is to attempt to find a use for them in other AID programs. As a practical matter, this involves looking for projects or other activities similar in scope to the terminated programs since the commodity requirements might be similar. The costs of staff time, warehousing, and special handling such as splitting shipments may outweigh any benefit of transfers to other AID programs. However, the possibility of such transfer should be explored if at all feasible, and this should be done within very short deadlines.

(2) An AID program which receives AID-vested commodities must reimburse, with its own appropriated funds, the program from which the commodities were transferred. Prices should be set so as not to exceed those which would be paid were shipments made directly from the producing country to the destination. Any windfall to a particular country which results from receiving major commodity transfers without reimbursement would be contrary to the intent of the original appropriation approvals.

(3) It may prove difficult to match vested commodities against specific needs of other AID programs, particularly if many of the commodities affected were financed under Commodity Import Programs. Such commodities may be unique in order to meet distinct market requirements; e.g., yarns, pharmaceuticals, chemicals, spares or replacement parts. Other commodities may have custom

characteristics which limit their utility in other AID programs. As inventories are completed on vested commodities, information from the inventories should be referred to M/SER/OP which will make the determinations on what commodities might be usable in programs of the various Bureaus and establish dates to allow the Bureaus to reach a decision. In addition, it may be necessary to provide Bureaus with manufacturers' brochures and calculations on cost and freight. The process of referrals to the Bureaus should continue until all inventories are completed and circulated.

c. **Offering Vested Commodities to Original Suppliers or Producers**

(1) The Office of Procurement will decide which vested commodities are excess to the needs of other AID programs and will contact original suppliers and producers or their authorized agents to see whether they are interested in repurchasing the commodities. Suppliers or producers may provide AID with the most promising opportunity to dispose of the goods promptly at advantageous terms. Where proprietary or brand items are involved, the original seller or producer may not want to have its goods move outside of established distribution channels and may, therefore, offer a favorable price. M/SER/OP will send telegrams to suppliers and producers stating that if they are interested in repurchasing the commodity, they should make an offer by a specific date.

(2) In certain instances, suppliers may be willing to accept return of shipments for credit. Acceptance is generally subject to inspection upon return, perhaps with a restocking charge. Whenever the supplier is a U.S. Government entity, such as a Defense Depot or GSA, such returns can be easily arranged.

(3) When return is agreed upon, shipments may be made via APO, FPO, or international parcel post or, in cases where ocean transportation is necessary, by consignment to an appropriate U.S. Dispatch Agent with instructions to forward the shipment to the designated U.S. supplier.

(4) Procedures must be established for AID/W to be fully informed so that refunds may be controlled. In most cases, returns for credit involve low value items which do not lend themselves to being sold pursuant to formal bidding or negotiated sales procedures where the goods are

located. Also, if sales efforts overseas prove unsuccessful and equipment having a sizeable value must be sold for scrap, return for credit might far exceed what could otherwise be realized.

(5) It is recommended on all returns for credit to commercial suppliers that it be clearly stated from the outset that the credit is to be paid to AID, not to remain as a credit balance against future purchases. Experience has shown that returns to commercial suppliers require considerable time and effort before refunds are actually remitted to AID/W. Refunds should be directed to the Office of Procurement or other designated office where proper identification can be provided before they are sent to the Office of Financial Management.

d. **Transfers to the General Services Administration (GSA)**

(1) After having queried Regional Bureaus on whatever might be used by them and after making efforts to sell commodities back to original U.S. suppliers or to other prospective buyers, the next step is to report remaining property located in the U.S. to GSA. This is done in accordance with the Federal Property and Administrative Services Act of 1949, as amended. Preliminary discussions should be held between AID and GSA to assure a smooth operation, and to preclude any misunderstandings on the authority of the above Act and the Foreign Assistance Act.

(2) Although GSA has no jurisdiction over disposition of AID overseas vested property, GSA may be interested in acquiring certain commodities included in the overseas inventories, so these should be reported to GSA also. For example, certain commodities might not be disposed of at other than scrap prices, but if they were in the United States they could be put to a useful purpose. GSA will be given the opportunity to inspect the property. GSA's interest, if any, will be balanced against AID's opportunity for recovery of funds through sale to private buyers. After considering the economics of doing so, selected commodities may be shipped back and reported to the GSA as domestic excess.

(3) Although commodities are reported to GSA as excess and held in GSA's warehouses, any storage charges are for the account of AID until eventual disposal.

(4) There are four basic disposal procedures used by GSA: (a) transfer to eligible Federal, state,

or local organizations without reimbursement; (b) transfer to certain organizations with reimbursement directly to AID, such reimbursement is usually no more than 20% of the original AID-financed FOB cost; (c) transfer against an "Application for Donation" to states' surplus property agencies; and (d) public sale.

(5) The "Report of Excess Personal Property" Standard Form 120, should be sent with a letter to the GSA office through which all transfers of property are routed, regardless of location. Acknowledgement by the GSA Region in which the property is located is generally accomplished by return of a copy of the original form SF 120 with a GSA assigned control number. After disposition, the Office of Procurement will be sent a copy of form SF 122, "Transfer of Excess Personal Property", which indicates the consignee. When there is to be some reimbursement, the Office of Procurement must follow up and either bill the consignee or determine if payment is to be made through GSA or another channel.

(6) Under donation procedures, M/SER/OP receives information copies of form SF 123, "Application for Donation of Surplus Personal Property"; however, unless a second copy is received showing that the application was approved by GSA, items are not considered as transferred. If GSA approves transfer no further forms are issued, and the approval date is considered as the transfer date.

e. **Public Sale by AID**

(1) **General**

When commodities located overseas cannot be used in other AID programs and attempts to negotiate sale or return to the original suppliers or producers prove unsuccessful, the commodities shall be publicly sold by AID. Commodities which are subject to wastage or spoilage may also be sold by AID. The procedures to be used for such sales are explained below.

(2) **Publicizing**

Since successful disposal of commodities will require the participation of commercial firms, advertising the opportunity to purchase such commodities is essential. At least four weeks before bid opening (or date for receipt of offers), AID's Office of Small and Disadvantaged Business Utilization should be given information to publish in an AID Procurement Information Bulletin. The Office of Small and Disadvantaged Business Utilization will also publish a notice in the Commerce Business Daily. Depending on the circumstances, consideration should be given to using commercial newspaper ads and trade publications also. For overseas sales, newspapers in the area where the sales will take place may reach a large number of prospects.

(3) **Formal Sales Procedures**

(a) Commodities located in overseas ports shall be sold under formal bid procedures, except that those subject to wastage and spoilage may be sold through negotiation. Formal bidding may be conducted using GSA's Standard Form 114, "Sale of Government Property - Bid and Award," and attachments, or documents may be developed to fit local needs. Bid documents should include "Additional Sealed Bid Conditions". A "Statement Regarding Disposition and Use of Property" must be submitted by each bidder. If formal bidding procedures are used to dispose of commodities located in the United States, Standard Forms must be used.

(b) Copies of all bid announcements and related documents should be sent to M/SER/OP - one copy by air pouch, another by airmail. Normally, two weeks should be allowed after mailing to permit bid announcements to be released simultaneously in Washington and in the country where the commodity is located. Bidders should be allowed twenty-one days from the date of release of the bid announcement for submitting their bids. Awards should be made within three weeks after bid opening.

(4) **Negotiated Sales Procedures**

(a) There are three situations in which AID should negotiate sales. One is to expedite disposal to prevent wastage or spoilage of either domestic or foreign excess property. Another is when formal bidding results in no offers or in unacceptable offers. The third is when commodities are sold back to the original suppliers or producers.

(b) For negotiated sales, offers are submitted on Standard Form 114E, "Sale of Government Property, Negotiated Sales Contract," with Standard Form ll4c, "Sale of Government Property, General Sales Terms and Conditions," as an attachment. For overseas sales, additional bid conditions are included. The offeror must also submit a "Statement Regarding Disposition and Use of Property."

(c) When an offer is acceptable, the SF 114E will be signed by an AID official with appropriate contracting authority and will constitute a sales contract. Upon payment by the purchaser, M/SER/OP will notify the appropriate GSA office in the United States or the AID office in the country where the goods are located to release the goods to the purchaser.

11E. Settlements

1. Introduction

a. When assistance is terminated and shipments to the cooperating country are prohibited, AID will make appropriate payment to suppliers who have not received payment for commodities to which AID has taken title. In lieu of accepting title, AID may negotiate with the supplier such other settlements as are equitable under the circumstances. Settlements with carriers and marine insurers may also be necessary when vessels are diverted before reaching the cooperating country.

b. One important determination to be made when assistance is terminated is who will have authority to settle claims. The vesting determination should include authorization to make settlements with suppliers. Authority to take extraordinary contract actions such as arranging settlements with suppliers has been delegated to the Associate Assistant to the Administrator for Management in Delegation of Authority No. 1170, Handbook 5.

2. Settlements with Suppliers

a. Notification

(1) As soon as there is a definite decision to terminate assistance a telegram should be sent to U.S banks requesting that they report all outstanding letters of credit under AID Letters of

Commitments.

(2) Suppliers with outstanding letters of credit should be sent telegrams and letters requesting them to advise AID on the status of their transactions. They should be requested to dispose of the commodities through their normal course of business if AID has not taken title. Suppliers should be cautioned that if the commodities in question cannot be disposed of without sustaining a financial loss which the suppliers cannot or do not wish to bear, it will be necessary for the suppliers to hold the commodities and contact AID for instructions.

b. **Settlement Actions**

(1) Outstanding letters of credit involving unshipped commodities generally fall into three categories: (a) the supplier has not begun work, so AID has no liability; (b) the supplier can return items to stock or sell the commodities at little or no extra cost (e.g., an order for which AID agrees to pay a supplier $210 for the cost incurred in packaging, crafting, and preparing commodities valued at $3,943 for shipment to the cooperating country; AID pays a company $2,295 to cover cancellation costs for a shipment valued at $62,730); and (3) the supplier cannot sell the commodities due to special characteristics required under AID financing (e.g., the supplier contends that it had advertised worldwide in an effort to sell made-to-order needle bearings valued at $26,118 and AID then allows scrap value and settles the claim for $23,811).

(2) To help make such decisions, the office responsible for settlement (usually the Office of Procurement) may establish an ad hoc committee which would include representatives from other appropriate offices, such as General Counsel, the Geographic Bureau, and Financial Management. This committee can then be responsible for reviewing and approving or disapproving proposed settlements based on equitability for both AID and the supplier. AID auditors should verify supplier claims.

3. **Settlements with Carriers**

a. The issuance of such an order to carriers can result in claims by the carriers against AID for additional compensation, or in claims by AID against carriers in instances where AID is entitled to recover from the carrier a portion of the freight which AID has financed for the diverted consignments.

b. In the case of liner operators who have executed the form AID 282, "Supplier's Certificate and Agreement with the Agency for International Development," or the form AID 1450-4, "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities," any settlements with the carriers are to be in accordance with the maximum permissible freight as stipulated in Section 201.67(a)(4), AID Regulation 1 or in paragraph 3 of the form AID 1450-4, as appropriate. Any requests for additional compensation in excess of that allowed by these certificates will be denied. The Transportation Division of M/SER/OP also reviews the freight financed for each diverted consignment when the circumstances indicate that AID may be entitled to an adjustment and partial refund of freight from the carrier, by virtue of the difference in tariff rates and charges between the original port of discharge, and those applicable to the diversion port(s). When this review establishes that AID may be entitled to a refund, M/SER/OP issues a letter claim to the carrier for the refund.

c. In the case of chartered shipping, the terms of the charter party, normally executed by the carrier and the B/G or its agent, dictate the freight entitlements of the carrier. When AID vests title to the commodities carried under the charter party, the Transportation Division of M/SER/OP, which approved the charter in accordance with AID's requirement, must attempt to renegotiate the delivery and freight terms of the charter with the carrier. This is normally done by telephone and confirmed in writing between AID and the carrier. Depending upon the terms of this renegotiation and the circumstances of the altered delivery, the carrier may be entitled to additional compensation over that prescribed in the original charter, or the carrier's original entitlement may be reduced.

4. **Settlement with Marine Insurers**

a. **Adjustments**

(1) When a B/G has used AID financing for marine insurance on commodity shipments, and AID diverts these shipments to alternate destinations, AID may in some instances be entitled to an adjustment and partial refund from the insurers of the premiums which AID has financed. This can occur when, in

fact, the insured risk did not attach, by virtue of AID's diversion actions.

(2) M/SER/OP's Transportation Division and GC review the insurance coverage of any consignments diverted to alternate destinations and take action to obtain appropriate refunds from the insurers when circumstances warrant such action. AID's entitlement to such adjustment is based on the provisions of the form AID 282, or the form AID 1450-4, as executed by the insurer, thereby limiting the maximum price of incidental services as specified in subpart G of AID Regulation 1 or in paragraph 3 of the form AID 1450-4, respectively.

b. **Claims for Loss**

In the termination of a program, instances may occur where an AID-financed insured consignment is lost; e.g., it is of record as shipped but not recorded as delivered to the original destination or to the alternate destinations specified in AID's diversion orders to the carriers. When such an instance of loss is identified, M/SER/OP, with GC concurrence, claims the CIF value of the consignment from the insurer. The claim includes AID's entitlement, by virtue of the circumstances, its vesting action, and the provisions of AID Regulation 1, as made applicable by the insurer's execution of form AID 282 or the provision of form AID 1450-4.

11F. Accounting and Control of Sales Proceeds

1. Overseas Sales Proceeds

a. All proceeds should be deposited with the local U.S. Disbursing Office (USDO) for credit to an AID suspense account.

b. A certificate of deposit issued by the USDO should include appropriate transaction identification number(s) which will identify the item(s) sold. The Regional Controller's Office will use this documentation to relieve the commodity accountability and forward a copy to the Program Accounting and Finance Division of Financial Management (M/FM/PAFD.)

c. M/FM/PAFD will periodically prepare a SF 1097, "Voucher to Effect Correction of Error," which will transfer the funds from the suspense account and credit the applicable Appropriation/Allotment which initially funded the commodity procurement.

2. **Transfer of Vested Commodities to or Through USAID**

a. When making a transfer request, the USAID should indicate the appropriate funding citation.

b. The Regional Controller's Office will use shipping documents and the transfer request to relieve the commodity accountability.

c. A copy of the transfer request, shipping documents and appropriate transaction reference numbers should be forwarded by the Regional Controller to M/FM/PAFD.

d. M/FM/PAFD will prepare a journal voucher to credit the applicable Appropriation/Allotment that initially funded the commodity procurement and will prepare an Advice of Charge to the Mission fund citation.

3. **Sales of Vested Commodities in the United States**

a. Proceeds are to be forwarded to M/FM/PAFD for deposit to the suspense account.

b. M/FM/PAFD will notify the Regional Controller's Office of sales by appropriate transaction number so that the Regional Controller can relieve the commodity accountability. (A sample memorandum is listed in Appendix 11A)

c. M/FM/PAFD will periodically prepare an SF 1097, "Voucher to Effect Correction of Error," which will transfer the funds from the suspense account and credit the applicable Appropriation/Allotment which initially funded the commodity procurement.

11G. Adjustment of Claims Related to AID's Sale of Vested Commodities

1. AID's general policy is to sell vested commodities on an "as is, where is" basis. In this way AID manages to expedite sales of commodities with minimum liability for loss or damage for the items sold. In exceptional circumstances AID may sell these commodities on a basis which allows buyers to reject broken cartons or other hidden damage. For example, drums of chemicals and dyes may be found empty or water logged, contents of cartons of yarns may have deteriorated because of water or other damage, or boxes of parts may be found to have been mixed up or lost while in storage.

2. Any claims by the buyer for adjustment or refund are

reviewed by the Office of Procurement and the Office of the General Counsel, in light of the facts surrounding the sale and the terms of the sales contract, and an appropriate disposition is made.

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