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The Economic Cooperation Act of 1948[†]

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A. INTRODUCTION

BEGOTTEN by a Democratic administration, born out of a Republican controlled Congress, and now in the process of being weaned by a non-partisan administration, the infant Economic Cooperation Act of 1948¹ has, because of its non-political ancestry, a reasonably good chance of attaining its life expectancy of four and one-quarter years.² The most authoritative representatives of both parties have clearly and forcefully spoken in terms of a four and a quarter year program.³ The Act itself, while careful to limit the authorization to appropriate funds to a twelve month period,⁴ does authorize a program of four and a quarter years.⁵ During this period the Act will

[†]The views expressed herein are entirely those of the writer and in no way are intended to indicate the views of the Department of State.

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¹The Economic Cooperation Act of 1948, PUB. L. No. 472, 80th Cong., 2d Sess. (Apr. 3, 1948), hereinafter referred to as "the Act." Title I of this Act is the Foreign Assistance Act of 1948; Title II is the International Children's Emergency Fund Assistance Act of 1948; Title III is the Greek-Turkish Assistance Act of 1948; Title IV is the China Aid Act of 1948. Titles I and IV are administered by the Economic Cooperation Administration. (All further citations unless otherwise specified are to "the Act.")

²Survival, however, is only a part of the problem; the basic issue which will face the Congress and the American people will be the size of the appropriations to be made in the remaining years of the program.

³See text of President Truman's message to Congress requesting a four and a quarter year program. N. Y. Times, Dec. 20, 1947, p. 6, col. 5. See also Senator Vandenberg's statements in the Senate. 94 Cong. Rec. 1982-3 (March 1, 1948).

⁴§ 114(c).

⁵Section 114(c) of the Act begins: "In order to carry out the provisions of this title with respect to those participating countries which adhere to the purposes of this title, and remain eligible to receive assistance hereunder, such funds shall be available as are hereafter authorized and appropriated to the President from time to time through June 30, 1952, to carry out the provisions and accomplish the purposes of this title; . . ." Section 122(a) provides that the powers of the Administrator to provide assistance shall terminate June 30, 1952, unless previously terminated by a concurrent resolution of both houses of Congress. The Senate Report defends the one year authorization on the ground that "if it is generally recognized that the reeconomy program is coming under critical

constitute not only the most important single factor in our trade relations with the rest of the world, but its success or failure will probably determine our political and economic relations with western and eastern Europe.⁶

The Economic Cooperation Act is a complex piece of legislation, covering a multitude of subjects in considerable detail. But the details generally do not commit the administration of the Act to a narrow, rigid course of action. On the contrary, as a matter of legislative drafting, the greatest single virtue of the Act is that, despite its complexity, despite its broad coverage, despite its detail, it is flexible. The proponents of the legislation in both the executive and legislative branches recognized not only the potent inadvisability, but also the obvious futility, of attempting to determine a specific, rigid course to be followed in a unique voyage of four and a quarter years duration over relatively uncharted waters.⁷ While it is, therefore, impossible to predict definitively at this time many of the administrative decisions that will be made, it is important to examine the broad outlines of the Act and probable questions of interpretation which have arisen or will arise.

B. CONTRAST WITH PREVIOUS FOREIGN ASSISTANCE LEGISLATION

Relatively little assistance in interpreting the Act can be obtained from reviewing the terms and implementation of previous assistance acts. The administration of the United Nations Relief and Rehabilitation program,⁸ involving as it did an international relief administration, was necessarily executed on an entirely different basis from that contemplated by this Act. Moreover, the unpopularity of UNRRA with large sections of the Congress⁹ offers a reasonable guarantee that

review early in 1949, it will encourage the participating countries to exert every effort to show substantial progress by way of self-help between now and then. This additional impetus, coming during the early stages of the program, may prove exceedingly helpful." SEN. REP. NO. 935, 80th Cong., 2d Sess. 49-50. (1948).

⁶ See SEN. REP. NO. 935, 80th Cong., 2d Sess. 2 (1948). The Act is predicated on the proposition that "the Congress finds that the existing situation in Europe endangers the establishment of a lasting peace, the general welfare and national interest of the United States, and the attainment of the objectives of the United Nations."

⁷ Amendments introduced on the floor of the Senate and House tended to be more restrictive. This is true of § 111(a)(2), dealing with the utilization of United States flag vessels, and § 112(a)(c), concerning the export of wheat and wheat flour. Similarly, certain of the provisions of the Appropriation Act are rather restrictive in their construction. PUB. L. NO. 793, 80th Cong., 2d Sess. §§ 202, 203, 204, 205 (June 28, 1948).

⁸ (1944) 58 STAT. 122, 50 U. S. C. App. § 1571 (1946).

⁹ 94 Cong. Rec. 2331-2 (March 5, 1948); 94 Cong. Rec. 2717 (March 12, 1948); 94 Cong. Rec. 2816 (March 13, 1948); 94 Cong. Rec. 3855 (March 30, 1948).

the administrators of this Act will avoid any conscious or obvious duplication of UNRRA experiences. The Post War Relief Act of May 31, 1947¹⁰ was designed to furnish relief, not to provide recovery, and it envisaged primarily a government to government relationship in its execution. The Greek-Turkish Aid Act of 1947, designed to carry out the "Truman doctrine," authorized military as well as economic assistance and contemplated considerable United States participation in its implementation abroad.¹¹ The Foreign Aid Act of 1947,¹² popularly known as the Interim Aid Act, though drafted with an eye to the shortly forthcoming presentation of the Economic Cooperation Act, is clearly more comparable to the Post War Relief Act than to the Economic Cooperation Act. Nor can a satisfactory precedent be found in the wartime Lend-Lease Act;¹³ its purposes were different; its coverage, both as to countries and assistance, was on an entirely different basis; and the administration was necessarily of an entirely different character.

It is important, therefore, to understand those characteristics of this Act which distinguish it from previous foreign assistance legislation. First, it deals essentially with a *recovery* program, the factor of relief being present only because in the devastated, cold and hungry Europe of today relief is an integral part of recovery.¹⁴ Second, the very essence of the program is that European recovery can be accomplished only by a cooperative effort initiated by and among countries willing to ignore traditional boundaries of sovereignty in order to secure recovery on a European scale. When, in his speech of June, 1947, Secretary of State Marshall handed the initiative to the Europeans to draft a European recovery program,¹⁵ his intention was that the initiative would remain with the Europeans.¹⁶ The United States

¹⁰ (1947) 61 STAT. 125, 22 U. S. C. § 1411 (Supp. 1947).

¹¹ (1947) 61 STAT. 103, 22 U. S. C. § 1401 (Supp. 1947).

¹² PUB. L. No. 389, 80th Cong., 1st Sess. (Dec. 17, 1947).

¹³ (1941) 55 STAT. 31, 22 U. S. C. § 411 (1946).

¹⁴ SEN. REP. No. 935, 80th Cong., 2d Sess. 46 (1948).

¹⁵ The first official pronouncement of what was later to become the European recovery program was made by Under-Secretary of State Dean Acheson before the Delta Council at Cleveland, Mississippi. *THE EUROPEAN RECOVERY PROGRAM; BASIC DOCUMENTS AND BACKGROUND INFORMATION 2* (Nov. 10, 1947). (Prepared by the staffs of the Senate Foreign Relations Committee and House Foreign Affairs Committee).

¹⁶ "It is already evident that, before the United States Government can proceed much further in its efforts to alleviate the situation and help start the European world on its way to recovery, there must be some agreement among the countries of Europe as to the requirements of the situation and the part those countries themselves must take in order to give proper effect to whatever action may be undertaken by this Govern-

would finance the program; the United States would provide certain rules to assure elimination of waste and protection of its economy, procedures for deciding differences of opinion in the division of the total assistance fund, and "friendly aid" in implementing the program;¹⁷ but the program was to be throughout its active history a program of the Europeans. Third, a basic objective of the program was to establish conditions in which sound economic relations among the European countries, and of European countries with the rest of the world, would exist. These sound economic relations include maximization of trade,¹⁸ and the Act, therefore, contemplates the greatest possible utilization of private trade channels.¹⁹ Fourth, the process of recovery involves the entire economic activity of the countries concerned. Consequently, for the success of the program the Act attempts to assure that all economic resources of those countries will be devoted most advantageously to recovery, without at the same time involving the United States in the internal management of the economy of any one country or the management of the economic relations among the participating countries. The Act makes it possible for this distinction to be observed; the test lies in its implementation.

C. PURPOSES AND POLICIES OF THE ACT

In analyzing the provisions of the Act, the casual reader is likely to gloss over a somewhat rhetorical, though brief, introduction. Apart from the fact that the 80th Congress apparently prefers that lengthy legislation be prefaced with "Findings and Declaration of Policy,"²⁰ section 102 also finds justification in that it establishes a broad basis for interpreting many of the provisions of the Act. Throughout the Act, the standard of furthering the purposes of the Act is given as the qualifying factor in determining whether certain activities can be undertaken. Thus, to cite only a few instances, the determination of

ment The initiative, I think, must come from Europe." *N. Y. Times*, June 6, 1947, p. 2, col. 3, 6.

¹⁷ "The role of this country should consist of friendly aid in the drafting of a European program and of later support of such program so far as it may be practical for us to do so." *N. Y. Times*, June 6, 1947, p. 2, col. 3, 6.

¹⁸ In this connection, the Charter of the International Trade Organization is of major importance.

¹⁹ §§ 102(b)(3), 111(b), 112(h).

²⁰ Labor Management Relations Act, (1947) 61 STAT. 136, 29 U.S.C. § 141(b) (Supp. 1947); the Atomic Energy Act, (1946) 60 STAT. 755, 42 U.S.C. § 1801 (1946). The practice is not, however, novel to the 80th Congress. See National Labor Relations Act, (1935) 49 STAT. 449, 29 U.S.C. § 151 (1946).

which commodities and what services may be provided,²¹ in what circumstances guaranties of investments in the participating countries by United States nationals may be made,²² whether assistance shall be by grant or loan,²³ is to be based on what will further the purposes of the Act.²⁴

Section 102(b) defines as the purpose of the Act the effectuation of the policy established in section 102(a). The policies to be effectuated are the encouragement of the nations of Europe, "through a joint organization to exert sustained common effort . . . which will speedily achieve that economic cooperation in Europe which is essential for lasting peace and prosperity"; the sustaining and strengthening of the "principles of individual liberty, free institutions and genuine independence in Europe through assistance to those countries of Europe which participate in a joint recovery program based upon self-help and mutual cooperation"; provided, that the continuity of United States assistance should be "dependent upon continuity of cooperation among countries participating in the program."²⁵ All this is to be achieved through the rendering of assistance to the participating countries to the extent necessary to enable them to become independent of extraordinary outside assistance.²⁶ The standard is a relatively clear one in principle; in application it is broad, permitting administrative flexibility in its interpretation.

D. PARTICIPATING COUNTRIES

In providing what countries may qualify to receive assistance, the Act projects into actuality Secretary Marshall's original offer to "any government that is willing to assist in the task of recovery"²⁷ by cooperation in a joint recovery program. Thus, under the Act, the offer of assistance remains open to any European country, regardless of its

²¹ § 111(a)(1).

²² § 111(b)(3).

²³ § 111(c)(1).

²⁴ Other instances in the Act are §§ 103(a) (definition of a participating country); 104(d) (establishment of a corporation for use in implementation of the Act); 111(a) (general powers of the Administrator); 111(a)(1) (power to procure); 111(a)(2) (power to perform services for a participating country); 114(d) (reimbursement of Foreign Service personnel); 115(a) (power of Secretary of State to conclude agreements); 115(b) (contents of bilateral agreements with participating countries); 115(c) (provision of assistance prior to conclusion of bilateral agreements); 119 (exemption from contract and accounting laws); 121(a) (use of United Nations facilities); 122(a) (termination of program).

²⁵ § 102(a).

²⁶ § 102(b).

²⁷ See note 16 *supra*.

geographic or political relationship to the "iron curtain," which is willing to cooperate in a European recovery program.

Section 103(a) provides that any country²⁸ which signed the report of the Committee on European Economic Cooperation,²⁹ or any other country wholly or partly in Europe,³⁰ may receive assistance, provided that such country adheres to "a joint program for European recovery designed to accomplish the purposes" of the Act. Thus, to become eligible now to receive assistance a European country must first become a member of the Organization for European Economic Cooperation,³¹ established at Paris on April 16, 1948 by the countries signatory to the Paris report, under the rules established in the Convention for European Economic Cooperation.³²

Having thus entered through "the family door," a country to be eligible to receive assistance must next conclude a bilateral agreement with the United States as provided in section 115(b) of the Act. This section establishes ten provisions for inclusion in such agreement "where applicable."³³ Briefly, these provisions require the participating countries to:

²⁸ Sections 103(a)(1) and (2) of the Act provide that the term "country" includes "dependent areas under its administration." The phrase "any country" includes "any of the zones of occupation of Germany, any areas under international administration or control, and the Free Territory of Trieste or either of its zones." § 103(a)(2). The Act authorized a separate appropriation not to exceed \$20,000,000 for assistance to the Free Territory of Trieste or either of its zones pending the Territory or either of its zones becoming eligible to receive assistance. By section 103(b) such assistance is to be administered under the Foreign Aid Act of 1947, PUB. L. NO. 389, 80th Cong., 1st Sess. (Dec. 17, 1947).

²⁹ REPORT OF THE COMMITTEE ON EUROPEAN ECONOMIC COOPERATION (Sept. 22, 1947).

³⁰ Thus, for example, the USSR and its satellites are eligible.

³¹ CONVENTION FOR EUROPEAN ECONOMIC COOPERATION (Apr. 16, 1948). The signatory countries were: Austria, Belgium, Denmark, France, Greece, Ireland, Iceland, Italy, Luxembourg, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, and Turkey. The Commander-in-Chief of the United Kingdom Zone of Occupation signed on behalf of Bizonia (The United Kingdom and United States Zones of Occupation) and the Commander-in-Chief of the French Zone of Occupation of Germany signed on behalf of that zone.

³² A country may accede to the Convention after it has been ratified by ten original signatories by notifying the Government of the French Republic of its accession, and with the assent of the Council of the Organization. CONVENTION FOR EUROPEAN ECONOMIC COOPERATION ART. 25. The council is composed of all members (Art. 15) and decisions of the council are to be by mutual agreement of all members. (Art. 14).

³³ The phrase "where applicable" permits the exclusion of any provision from an agreement with a participating country where, because of particular circumstances, it would be unrealistic to require that country to undertake to comply with such pro-

1. promote industrial and agricultural production;³⁴
2. take financial and monetary measures designed generally to restore or maintain³⁵ confidence in the participating country's monetary system;³⁶
3. cooperate with other participating countries in expanding the interchange of goods and services, including the reduction of barriers to trade, among the participating countries and with other countries;³⁷
4. make efficient and practical use of its resources, including taking measures to locate and identify and put into appropriate use assets located within the United States belonging to its citizens;³⁸
5. facilitate the transfer to the United States, on terms to be agreed to subsequently, of materials required in the United States;³⁹
6. deposit in a special account the local currency equivalent of the dollar value of commodities furnished to a participating country on terms not requiring repayment, such account to be used as agreed between the two countries;⁴⁰
7. publish in that country and transmit to the United States quarterly reports of operations under the agreement;⁴¹

vision. Thus the provision regarding local currency deposits to be made where assistance is furnished on terms not requiring repayment is inapplicable to a country receiving no financial assistance or financial assistance under loan terms only.

³⁴ § 115(b)(1).

³⁵ The alternative "restore or maintain" recognizes that certain participating countries, such as Switzerland, have today a sound monetary system.

³⁶ § 115(b)(2).

³⁷ § 115(b)(3). With respect to reduction of trade barriers, the provision generally included in the bilateral agreements provides: "The Government of..... will take the measures which it deems appropriate, and will cooperate with other participating countries to prevent, on the part of private or public commercial enterprises, business practices or business arrangements affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices or arrangements have the effect of interfering with the achievement of the joint program of European recovery." See ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND FRANCE ART. II, § 3 (June 28, 1948).

³⁸ § 115(b)(4).

³⁹ § 115(b)(5).

⁴⁰ § 115(b)(6).

⁴¹ § 115(b)(7). This provision should be contrasted with the more extensive requirements concerning publicity of previous assistance acts. (1947) 61 STAT. 126, 22 U. S. C. § 1413 (Supp. 1947); (1947) 61 STAT. 104, 22 U. S. C. § 1403 (Supp. 1947); PUB. L. No. 389, 80th Cong., 1st Sess., 5(c)(d)(i) (Dec. 17, 1947).

8. furnish upon request information to the United States relevant to the rendering of assistance;⁴²
9. agree to negotiate agreements covering (a) transfers to the United States of materials required by the United States, (b) protection to our nationals of the right of access to the development of such materials, and (c) schedules of increased production and delivery of an agreed percentage of such materials to the United States;⁴³
10. submit to the International Court of Justice, or other arbitral tribunal mutually agreed upon, any case espoused by the United States where property rights of United States nationals have been affected by governmental measures of a participating country.⁴⁴

The very concept, as well as the content, of the bilateral agreements has been attacked by the Communists as constituting an invasion of the sovereignty of the participating countries.⁴⁵ Legally and factually, this is nonsense. Legally, a government does not lose sov-

⁴² § 115(b)(8).

⁴³ § 115(b)(9).

⁴⁴ § 115(b)(10). The following additional provisions generally have been included in the bilateral agreements (All references are to the ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND FRANCE [June 28, 1948]): Undertaking by the participating country to cooperate with the United States in effecting off shore (outside of the United States and its territories) purchases at reasonable prices (Art. I, § 3); undertaking by the participating country to accord sympathetic consideration to proposals made in conjunction with the International Refugee Organization directed to the largest practicable utilization of manpower available in any of the participating countries (Art. II, § 2); undertaking by the participating country to consult concerning projects proposed by United States nationals in connection with guaranties of currency transfers to such nationals by the United States Government (Art. III, § 1); undertaking by the participating country that it will recognize as property of the United States Government any credits in local currency or local currency assigned to the United States Government under such guaranties (Art. III, § 2); detailed provisions concerning local currency deposits (Art. IV); undertaking by the participating country to cooperate with the United States in encouraging and facilitating travel by United States citizens (Art. VI, § 1); undertaking by the participating country to negotiate, at the request of the United States, agreements designed to facilitate entry of private relief goods donated to or by United States voluntary non-profit relief agencies and of relief packages (Art. VI, § 2); provisions according special benefits to such United States special missions for Economic Cooperation as may be established in the participating countries, to the United States Special Representative in Europe and his staff, and to the members and staff of the Joint Congressional Committee (Art. IX); provisions concerning the entry into force, amendment and duration of the agreements (Art. XII).

⁴⁵ N. Y. Times, June 27, 1948, § 1, p. 1, col. 4; N. Y. Times, June 27, 1948, § 1, p. 9, col. 3.

ereignty by entering freely into a treaty under which its agrees to undertake certain action or to allow certain privileges to another government.⁴⁶ Factually, examination of the background of these ten provisions reveals that seven were originated, in one form or another, by the countries signatory to the CEEC report, either as specific undertakings among themselves or as activities clearly contemplated as inhering in a recovery program. Four of the provisions are reiterations of pledges made by the countries signatory to the Paris report of the CEEC.⁴⁷ Of the remaining six provisions generally required by the Act to be included in the bilateral agreement, the two dealing with the transmission of information to the United States were not appropriate for inclusion in the CEEC report. But since the report itself was a report to the United States on economic conditions and a proposed program of recovery, and since the report contemplated further submissions of information to the United States, these two undertakings were inherent in the coordinated request for assistance. The requirement that the countries place in a special deposit the local currency equivalent of the dollar value of commodities made available by grant is, in effect, a particularization of one aspect of the undertaking to achieve internal financial stability.⁴⁸ Moreover, it is clear from the legislative history that these deposits are to be used in such manner as will best contribute to the general program of achieving a sound and stable currency.⁴⁹ This leaves only the two provisions dealing with the acquisition by us of materials in short supply in the United States, and the one provision covering arbitration of cases involving the property of our nationals, as completely novel to the undertakings entered into by the participating countries on September 22, 1947.

The CEEC report, therefore, provided the working basis for the drafting of section 115(b). The Convention for European Economic Cooperation, entered into by the sixteen participating countries, Bizonia and the French Zone of Occupation of Germany on April

⁴⁶ 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 12 (1943).

⁴⁷ These are the agreements to promote production, to achieve financial stability, to cooperate with other countries in expanding trade, and to make the fullest use of its resources.

⁴⁸ REPORT OF THE COMMITTEE ON EUROPEAN ECONOMIC COOPERATION § 32 (Sept. 22, 1948).

⁴⁹ SEN. REP. No. 935, 80th Cong., 2d Sess. 37-38 (1948); H. R. REP. No. 1585, 80th Cong., 2d Sess. 37 (1948).

16, 1948,⁵⁰ in reiterating the proposals of the Paris report, formalized those proposals as firm undertakings made by each signatory to all other signatories.

E. SCOPE OF ASSISTANCE

Upon concluding a bilateral agreement with the United States, a participating country is eligible to receive assistance from the United States. The character of such assistance falls into two broad categories:

1. Assistance in the form of preferential treatment in allocation of short supply items. This form of assistance is of particular importance in the case of countries which are not expected to be given financial assistance. The Act quite properly envisages that allocations of short supply items, even if acquired out of the dollar resources of a European country, constitute a form of assistance.⁵¹

2. The giving of financial assistance, either by providing gratis commodities or services or by making loans. Any commodity required for the furtherance of the purposes of the Act may be made available.⁵² The Administrator may finance not only the procurement of a commodity from any source,⁵³ but any cost incurred in the processing, storing, transporting and repairing of a commodity, or he may finance "any other services . . . which he determines to be required for accomplishing the purposes" of the Act.⁵⁴

There are certain limitations which the Act places on the furnishing of assistance which are of considerable importance in its administration:

1. The procurement of commodities must be provided in such manner as will minimize the drain upon the resources of the United States and will avoid impairment of the fulfillment of our vital needs.⁵⁵ In practice this safeguard is maintained by the export control system

⁵⁰ Agreements have been concluded with all the countries listed in note 39 *supra*, with the exception of Switzerland, which is not intended to receive financial assistance. For a general summary of the agreement with Italy see 19 DEP'T STATE BULL. 37-38 (1948).

⁵¹ Thus section 111(a) of the Act in authorizing the Administrator to provide assistance includes procurement assistance.

⁵² § 111(a).

⁵³ § 111(a)(1). See SEN. REP. No. 935, 80th Cong., 2d Sess. 60 (1948); H. R. REP. No. 1585(80th Cong., 2d Sess. 87 (1948).

⁵⁴ § 111(a)(2)(3). The Act authorizes provision of technical information and personnel. SEN. REP. No. 935, 80th Cong., 2d Sess. 60 (1948); H. R. REP. No. 1585, 80th Cong., 2d Sess. 88 (1948).

⁵⁵ § 112(a).

administered by the Secretary of Commerce. With respect to items in short or potentially short supply, the Department of Commerce normally requires that sufficient amounts be reserved for United States domestic needs.⁵⁶ But this provision should not be interpreted as requiring that no items in short supply be made available. It speaks of our "vital needs," not merely of our "needs"; it speaks of minimizing, not eliminating, the drain upon our resources. The Act is predicated on the fundamental proposition "that the American people regard a European recovery program as worthy of some short-run sacrifices."⁵⁷

2. Petroleum and petroleum products are, to the maximum extent practicable, to be acquired from sources outside the United States, and consideration is to be given to avoiding the furnishing of petroleum burning commodities to such an extent as will unnecessarily impair the limited world petroleum supply.⁵⁸

3. In order to assure an adequate supply in the United States of by-products resulting from the milling of wheat, twenty-five per cent of the total wheat furnished to participating countries on terms not requiring repayment is to be in the form of flour.⁵⁹

4. In general, agricultural commodities in surplus in this country are to be acquired where such commodities are within the requirements of the participating country and are being transferred on terms not requiring payment.⁶⁰ The requirement to utilize surplus agricultural commodities is to be effectuated under the following conditions: (a) the commodity must be determined by the Secretary of Agriculture to be in excess of domestic requirements; (b) it need be procured only where it is intended for transfer on terms not requiring payment; (c) it must be within the requirements of the participating country concerned; and (d) the application of the requirement to pur-

⁵⁶ (1940) 54 STAT. 714 as amended, PUB. L. No. 395, 80th Cong., 1st Sess. (Dec. 30, 1947).

⁵⁷ SEN. REP. NO. 935, 80th Cong., 2d Sess. 32 (1948). See also H. R. REP. NO. 1585, 80th Cong., 2d Sess. 30-34 (1948).

⁵⁸ § 112(b). The United States is a net importer of crude oil and exporter of refined oil. This provision is designed to prevent an unnecessary decrease in United States oil supply.

⁵⁹ § 112(c). This provision is designed to protect the United States millers, as well as to secure to the United States a minimum percentage of the end products of milling. It raises problems with respect to those participating countries which have adequate milling facilities.

⁶⁰ § 112(d)(1).

chase such commodity in the United States is not to hinder the Administrator in the general execution of his responsibilities.⁶¹

In the event that the Commodity Credit Corporation acquires surplus commodities under price support programs, such surpluses, to the extent available, are to be utilized to the maximum extent practicable in furtherance of the purposes of the Act.⁶² The sales price of such commodities is to be sufficient to reimburse the CCC, provided it is not higher than the domestic market price of such commodity as determined by the Secretary of Agriculture. The CCC can obtain reimbursement from two sources: first, payment out of the Administrator's funds; second, payment out of funds obtained under section 32 of the amendment to the Agricultural Adjustment Act contained in Public Law 320, 74th Congress,⁶³ provided that funds from this latter source do not exceed 50 per cent of the sales price. Thus the Secretary of Agriculture can meet a part of the costs of such commodities from other than ECA funds, at least while section 32 funds remain available. While the Act does not require the Secretary of Agriculture to utilize section 32 funds, this is the only substantial use to which they can now be applied. Since their use will aid in the disposition of surpluses held by the CCC, and since the cost of such commodities will accordingly be reduced in so far as ECA funds are employed, utilization of section 32 funds is to be expected, at least for so long as they remain available.

5. Where an agricultural commodity in the United States is in surplus and is acquired for transfer under terms not requiring payment, the Administrator, under certain conditions, is to procure an amount of each class or type of such commodity in the approximate proportion that such class or type bears to the aggregate excess of such commodity over domestic requirements.⁶⁴ The legislative history makes clear that this provision is applicable, however, only if all of the following conditions exist: (a) the agricultural commodity is in surplus in the United States, as determined by the Secretary of Agriculture; (b) the class or type must be within the requirements of the partici-

⁶¹ H. R. REP. NO. 1585, 80th Cong., 2d Sess. 93-94 (1948).

⁶² § 112(e).

⁶³ (1935) 49 STAT. 774, 7 U. S. C. § 612(c) (1946), authorizing, in effect, use of 30% of the gross receipts of customs duties for subsidizing the exportation and domestic consumption of agricultural products. In appropriating funds to the Department of Agriculture for the fiscal year 1948, this authority was generally rescinded. PUB. L. NO. 266, 80th Cong., 1st Sess. Title III (July 30, 1947). Section 112(f) of the Act cancels that rescission.

⁶⁴ § 112(d)(2).

pating country; (c) the application of this provision should not hinder the Administrator in the effective carrying out of the provisions of the Act, and must be administratively practicable.⁶⁵ The last condition is of considerable importance. Many agricultural commodities have a multitude of classes and types, and application of this provision to all such commodities would involve a maximum of calculation and a minimum of procurement. Clearly, the provision applies to tobacco,⁶⁶ but it will probably be found to be administratively impractical of application to most other surplus agricultural commodities.⁶⁷

6. A minimum of fifty per cent of our exports of nitrogenous fertilizer materials or nitrogenous compounds shall come from the production of plants operated by or for the Department of the Army.⁶⁸

7. Funds made available under the Act may not be used for the procurement of farm machinery, including tractors, in an amount which would bring the total export of such commodities, by or for the benefit of the participating countries, to more than \$75,000,000.⁶⁹ Thus, regardless of whether the procurement of farm machinery and tractors is made out of a participating country's own dollar resources, an absolute ceiling is placed on the total of such exports to participating countries from this country. In view of the considerable need by the participating countries for agricultural machinery, this provision may retard the agricultural recovery of Europe, unless the machinery can be obtained elsewhere than in the United States. The provision reflects the tremendous unfilled demand for agricultural machinery in this country; it ignores, however, the fact that this demand results from an increased mechanization of our farms, resulting in turn from increased earnings of farmers, and that, therefore, the limitation may not be required to protect our "vital needs" but may only serve to protect us from a minor sacrifice. The provision presumably does not cover tractors not commonly used on farms, nor apparently does it affect the furnishing of spare parts and repair materials for agricultural tractors, except where customarily furnished as a part of the delivery of the tractor.

⁶⁵ SEN. REP. NO. 935, 80th Cong., 2d Sess. 63 (1948); H. R. REP. NO. 1585, 80th Cong., 2d Sess. 93-94 (1948).

⁶⁶ 94 Cong. Rec. 3859 (March 30, 1948).

⁶⁷ Very few agricultural commodities are marketed according to type. See 94 Cong. Rec. 3859-60 (March 30, 1948).

⁶⁸ PUB. L. NO. 793, 80th Cong., 2d Sess. § 205 (1948). This provision is designed to assure continued operations to plants which are financed by the Department of the Army.

⁶⁹ *Id.* § 203.

8. Funds made available under the Act may not be utilized to purchase in bulk any commodities at prices higher than the market price prevailing in the United States at the time of the purchase, adjusted for differences in the cost of transportation, quality and terms of payment.⁷⁰ This provision, inserted in the Appropriation Act, is designed to prevent extravagant spending of funds made available under the Act. While laudatory in purpose, in practice it renders operations considerably more difficult. Moreover, not all of its terms are clear.

There appears to be no question but that the provision is applicable to purchases within as well as outside of the United States. "Market price prevailing in the United States" most probably means any price for export which is within the limits of the quoted prices in the United States for the day as of which the purchase price is established, or the weighted average with respect to purchases for export over a period of time. Consequently, where a commodity is not available for export from the United States in the grades and quantities required, the provision is not applicable, there being no export "market price prevailing in the United States." The phrase "at the time of the purchase," in the case of government procurement, presumably refers to the day as of which the purchase price is established, as between the procuring agency and the seller; in the case of other purchases, the time of the purchase is apparently to be determined by the terms of the agreement between the seller and the buyer. Differences in the cost of transportation to destination, applicable in cases of procurement from sources outside the United States, must mean that the cost of the commodity plus cost of transportation to destination (the delivered price to the participating country) is not to exceed the market price in the United States plus costs of transportation from the United States.

The phrase "purchases in bulk" has no clarifying legislative history. At one end of the scale, it might be held applicable only to purchases of commodities and raw materials for movement as bulk cargo on ocean vessels, tank cars, and similar methods of transportation. This would include, for example, grain, coal, oil and pig iron when unpackaged and purchased in carload or larger lots; it would thus be inapplicable to such items as copper bars, lumber, steel pipe and

⁷⁰ *Id.* § 202. This provision specifically does not cover commodities "procured by, or in the possession of the Commodity Credit Corporation pursuant to the Act of July 1, 1941 (55 STAT. 498), as amended . . ."

other similar commodities which are purchased not in "carload bulk," but by specification as to quantity, quality, weight, etc. At the other end of the scale, the provision could be interpreted as including all items purchased in large quantity. If neither of these two criteria is applied, then even a relatively self-operating test becomes impossible. The provision is extremely difficult of administration where purchases are made by the participating country, or through private channels, since the authorization to purchase issued by the Economic Cooperation Administration precedes the actual purchase or even the establishment of the purchase price. Since the language prohibits use of appropriated funds to finance any purchase at an excessive price, the burden on the Economic Cooperation Administration of checking into each case of procurement through channels other than government procurement to assure non-excessive prices could indeed be a heavy one. At least two procedures are open to cure this administrative burden. On the one hand, bulk purchases could be handled entirely through United States Government procurement, so that at the time of the purchase the Government procuring agency could satisfy itself on compliance with this section. While simple in operation, this procedure would do considerable violence to the clearly repeated policy of maximizing the use of private trade channels.⁷¹ The second procedure, which is generally practiced by the ECA, is to require the suppliers to provide certificates of compliance, with the ECA policing the validity of such certificates.

The provision may well have the effect of requiring that more and more commodities be purchased in the United States, for, as the supply of any commodity in the United States becomes greater, the market price will in most circumstances be accordingly reduced. Where this factor prohibits the purchase of a commodity in one participating country for transfer to a second participating country, the result might be harmful to the success of the program. Purchases with ECA dollars in one participating country for use in a second participating country makes for double use of the dollars. In such circumstances the dollars, in effect, initially provide the means for obtaining in a supplying participating country the required commodity for the purchasing participating country, and second, they are then used by the supplying participating country to help meet that

⁷¹ See note 19 *supra*. Generally the dollars will be provided to the supplying country on a grant basis, and that country will then release local currency deposited in the special account under section 115(b)(6) to the purchasing participating country.

country's balance of payments deficit with the Western Hemisphere.⁷² Moreover, to require that procurement in all such cases be made in the United States may upset existing trade patterns, not only with non-participating countries but among the participating countries.

9. To the extent practicable, fifty per cent of the gross tonnage of commodities procured within the United States out of funds made available under the Act are to be shipped on United States flag vessels where such vessels are available at market rate.⁷³ As proposed by the Executive, and as recommended by both the Senate Foreign Relations and the House Foreign Affairs Committees, provision was made for leasing and selling United States vessels,⁷⁴ but the provision was stricken by both houses⁷⁵ of Congress. The language of the provision and its legislative history support the interpretation that the fifty per cent provision does not require that fifty per cent of each commodity or that fifty per cent of all commodities procured in the United States with ECA funds for shipment to each participating country, be shipped on United States flag vessels. The more reasonable interpretation is that fifty per cent in value of the total commodities procured in the United States out of ECA funds and made available to all participating countries be shipped on United States flag vessels.⁷⁶ The phrase "to the extent such vessels are available at market rates," in the light of the legislative history, would appear to mean the world market rate of all vessels, rather than the market rate of United States vessels.⁷⁷ Since shipments on American vessels require expenditures of dollars, this provision has necessarily increased the cost of the program.⁷⁸

10. Commodities are not to be transferred to a participating coun-

⁷² Section 112(d)(1) of the Act, generally requiring acquisition of United States surplus agricultural commodities, excepts acquisitions in one participating country for transfer to a second participating country. A similar exception in the provision of the Appropriation Act under discussion would be desirable.

⁷³ § 111(a)(2).

⁷⁴ See SEN. REP. NO. 935, 80th Cong., 2d Sess. 36-37 (1948); H. R. REP. NO. 1585, 80th Cong., 2d Sess. 35 (1948).

⁷⁵ According to the House Committee on Foreign Affairs, "conservative estimates" placed the increased cost resulting from the elimination of authority to sell and lease vessels at \$100,000,000 for the first year. H. R. REP. NO. 1585, 80th Cong., 2d Sess. 35 (1948).

⁷⁶ 94 Cong. Rec. 2372 (March 8, 1948).

⁷⁷ 94 Cong. Rec. 3847 (March 30, 1948).

⁷⁸ See H. R. REP. NO. 1585, 80th Cong., 2d Sess. 35 (1948) for a brief discussion of the shipping problem.

try in those cases where the participating country utilizes that commodity in the production of an end product for shipment to a non-participating European country and where we would refuse to export such end product so produced to a non-participating European country on grounds of national security.⁷⁹ This provision arises out of the strong feeling in Congress that our financial and commodity resources should not be made the vehicle for strengthening Soviet Russia and its satellites,⁸⁰ declared opponents of the legislation.⁸¹

The Conference Report of the Senate Foreign Relations and House Foreign Affairs Committee makes it clear that it is not for the Administrator to determine, without any guidance from the agency administering export controls, what commodities are denied an export license on grounds of national security. The practice of the Department of Commerce has been to deny export license applications without specifying the basis. Accordingly, the Conference report contemplates that the President will promulgate regulations under which the Administrator can make a finding to determine whether or not export license applications are denied in the interest of national security.⁸² These regulations will specify those commodities, or the types of commodities, which would so be denied a license for export to a non-participating country.

The enforcement of the provision will prove difficult. How can one determine with respect to fungible goods whether it was, for example, coal procured from the United States, indigenous coal, or coal acquired from other sources which went into the production of a commodity exported to a non-participating European country. Similarly, it will be difficult to trace the industrial processes in the case of the machine tools made available under the Act which are used to produce a machine which, in turn, is used to produce a commodity for export to a non-participating country.

The provision must be administered in such a manner as will not discourage a greatly desired and required increase in East-West trade.

⁷⁹ § 117(d).

⁸⁰ It is, of course, technically equally applicable to other non-participating countries, e.g., Spain and Trieste, unless and until they become participating countries.

⁸¹ See Soviet Foreign Minister Molotov's statement on withdrawing from the European Foreign Ministers' Conference. *N. Y. Times*, July 3, 1947, p. 4, col. 3. The manifesto issued by the Central Committees of the Communist parties meeting in Poland in October 1947 stated: "The Truman-Marshall plan is only a farce, a European branch of the general world plan of political expansion being realized by the United States of America in all parts of the world." *N. Y. Times*, Oct. 6, 1947, p. 3, col. 2.

⁸² H. R. REP. No. 1655, 80th Cong., 2d Sess. 32 (1948).

The success of the program will be considerably facilitated by an increase in such trade.⁸³ The problems raised by this provision pose difficult questions in our relations with the East and in the relations of the participating countries with the East.

11. The corollary of the provision on East-West trade is the requirement of section 112(g) that if the United States export surplus of a commodity is insufficient to meet the needs of the participating countries, the export of such commodity to a non-participating European country shall not be authorized unless such export is otherwise determined⁸⁴ to be in the national interest. The clear purpose of this provision is to assure that scarce commodities are made available to the participating countries in preference to non-participating European countries.

Some question may arise as to whether this provision is inconsistent with our principles of free trade. Export controls were instituted before the second world war. Since the termination of hostilities, such controls have been applied primarily to assure a reasonable and equitable distribution of commodities in short supply. The controls are exercised primarily on the basis of end-use; preference is given to the export license application revealing the most urgent need. Consequently, in the normal course of events, an application within the approved OEEC program would be considered better justified than a request not falling within the program. An export within such program is one which will benefit not only the recipient country, but also, through the recovery program, will benefit directly or indirectly the other participating countries. But a shipment to a non-participating country, under the exception clause of section 112(g), can be licensed if the end-use justifies such priority. As the standard of end-use is the same for all countries, equal treatment is accorded all countries in so far as the method of licensing short supply items is concerned. The provision itself, therefore, is not inconsistent with free trade principles, and the question of violation of those principles in any individ-

⁸³ OUTLINE OF EUROPEAN RECOVERY PROGRAM, submitted by the Department of State for the use of the Senate Foreign Relations Committee, 51-52 (Dec. 19, 1947); SEN. REP. No. 935, 80th Cong., 2d Sess. 40-41 (1948). It is clearly contemplated that Western Europe should obtain food and raw materials from Eastern Europe, exporting in return manufactured goods, if European recovery is to be established on a sound basis. Thus, at the present time the participating countries are importing from the western hemisphere many commodities, such as coal, which would be more economically obtained from Eastern Europe.

⁸⁴ The determination is to be made by the agency administering export control, the Commerce Department under Exec. Order No. 9919, 3 FED. REC. 59 (1948).

ual case is no different from any similar question which could have arisen since the inception in 1940 of export controls.

12. Related to these provisions dealing with non-participating countries is section 204 of the Appropriation Act.⁸⁵ This section provides that "whenever an export license for a commodity, the production or shipment of which to a non-participating country was contracted for in good faith prior to March 1, 1948, is denied or cannot be obtained," the Administrator shall procure such commodity for transfer to a participating country "in accordance with the requirements of such country." The price to be paid is not to be less than the contract price, including any cost in converting the commodity to meet the requirements of the participating country.

This provision does not arise out of any aspect of the recovery program itself, but rather it stems from the application of the recent policy of denying export licenses for shipments to Soviet Russia and its satellites of "critical materials." The language of the section, by requiring that the commodity must be within the requirements of the participating country concerned, avoids the undesirable consequence of making a "junk dealer" out of the Administrator, which would follow were he required to acquire all such commodities. This is not to argue that relief should not be given in all cases to producers or exporters who find themselves saddled with special order commodities which cannot be exported by reason of a change in governmental policy and through no fault of theirs. But the funds appropriated for European recovery are scarcely the appropriate source for providing such relief.

F. METHODS OF PROVIDING ASSISTANCE

The *modus operandi* of providing assistance to the participating countries is based on the following basic principles:

1. The programs of assistance will initially be formulated by the participating countries in such a manner as will assure that their requests constitute neither individual programs nor relief programs, but will provide a coordinated program designed to achieve European recovery.⁸⁶

2. The extent of the financial assistance to be rendered by the United States is based on the balance of payments deficit of the par-

⁸⁵ PUB. L. No. 793, 80th Cong., 2d Sess. § 204 (1948).

⁸⁶ OUTLINE OF EUROPEAN RECOVERY PROGRAM 59.

ticipating countries with the Western Hemisphere⁸⁷ arising out of import programs designed to (1) furnish the means for covering essential import needs and (2) support measures of self and mutual help on the part of the participating countries necessary to achieve economic recovery.⁸⁸

3. To the maximum extent possible, private trade channels are to be utilized.⁸⁹

I. *Programming*

The proposed import programs are initially to be prepared by each of the participating countries.⁹⁰ These programs will include the commodities required from the Western Hemisphere, their dollar values, and the extent to which financing is proposed to be from the participating country's dollar resources and from ECA funds. As in the case of the CEEC report, programs will be prepared on an annual basis.⁹¹ The programs will then be submitted to the OEEC. It is in this stage that the European, rather than the country-by-country, character of the program will be determined. It is not a simple matter for the European countries as a group to review each country's program with

⁸⁷ There is, of course, a balance of payments deficit incurred by one participating country with another participating country, with the creditor country unwilling to accept anything but "hard currency" as payment for new transactions. It is possible that some of this intra-European balance of payments deficit will be financed by ECA dollars. Another possibility is for the United States to make stabilization loans. This possibility was considered by the executive branch but not requested since at the time of the submission of the proposed legislation to Congress it was not possible to estimate either the amount required for such purpose or the appropriate time for making such loans.

⁸⁸ It is difficult to state specifically at what point recovery will be achieved. While the general purpose is to enable a country to "become independent of extraordinary outside assistance," the point at which that status is reached depends on the standard of living which is to be achieved. Thus, while it would not be proposed that England will have achieved that status once it can support its present austerity economy, neither is it contemplated that its standard of living must be equal to that of the United States. It is probable that no specific answer will be forthcoming; in each case the standard of living to be achieved is generally a reasonable one, considering the economic history of the country concerned. See discussion on this point in the *Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, on the Foreign Aid Appropriation Bill for 1949*, 80th Cong., 2d Sess. 305-307 (1948).

⁸⁹ See note 19 *supra*.

⁹⁰ The ECA missions in each country will render "friendly aid" in the preparation of the country program, but will not in any way bind the ECA to approval or support of the programs.

⁹¹ The present trend is to concentrate on the annual program, with stress on the major commodities, and a considerable miscellaneous category. The annual program will subsequently be broken into quarterly programs for reasons of administration and flexibility.

a critical eye.⁹² But the more critical the review at this stage, the better the chances of securing a European program. Primarily, the review of the OEEC will be to determine whether the materials cannot be supplied by other participating countries through inter-European trade, and whether the proposed programs of imports will contribute to the general objectives of the OEEC. To have any real significance this review must necessarily include a review of all major items in the program regardless of the source of the proposed financing. Thus, to take the extreme case, Portugal will finance all of its imports from the Western Hemisphere out of its dollar resources. Yet the OEEC has a direct interest in satisfying itself that proposed Portuguese imports from the Western Hemisphere of short supply items will contribute to European recovery; further, the OEEC should determine whether use of such commodities can make a greater contribution to European recovery if made available to another participating country. The task thus presented the OEEC will be to overcome the inevitable reluctance of each of the participating countries to question the programs of any other country and thereby admit that its proposed program is subject to an equally searching examination by the other countries. However, the fact that the participating countries under pressure of imminent economic disaster did join together in formulating the CEEC report and in establishing the OEEC, steps unprecedented in the history of countries traditionally opposed to any such cooperative effort, gives promise that historical prejudices and patterns may still further be overcome⁹³ for the common good.

Upon completion of its review, the OEEC will then formally submit the entire program to the United States. While the principal review of the program will necessarily be by the Economic Cooperation Administration,⁹⁴ a program of such magnitude will obviously require review by many other agencies. The Departments of Commerce, Agriculture, and, to a lesser extent, Interior, will be required to

⁹² The difficulty experienced by the OEEC in recommending a program for the second year of operations testifies to the truth of this. *Washington Post*, Sept. 8, 1948, p. 10, col. 2.

⁹³ Section 115(d) of the Act contemplates that the OEEC will insure that each participating country makes efficient use of all its resources including those made available under the Act, "by observing and reviewing such use through an effective follow-up system" approved by the OEEC. See CONVENTION FOR EUROPEAN ECONOMIC COOPERATION ART. 9 (Apr. 16, 1948).

⁹⁴ The Administrator cannot delegate to the OEEC, or any other international or foreign organization or agency, "any of his authority to decide the method of furnishing assistance" under the Act, "or the amount thereof." § 121(a).

review the program to determine availabilities, both in the United States and in other Western Hemisphere countries. The State Department will necessarily review the programs continuously, for allocation of assistance among the participating countries will constantly involve political questions apart from the purely economic aspects of a recovery program. The policy so successfully applied at the time of the Italian elections may require reproduction in other countries, resulting in variations, primarily on a short term basis, in proposed programs.

The Economic Cooperation Administration's review of the program will be concerned principally with whether the materials requested constitute reasonable requirements of the participating countries, as compared to the requirements of other participating countries, and whether the dollar totals of the program fall within availability of funds. The Act does not attempt to provide either the amount of assistance to be made available to each participating country or the selection of commodities for which ECA financing is to be provided. Even, as noted above,⁹⁵ where it requires use of agricultural commodities in surplus in the United States, it recognizes that such surpluses need not be utilized if they are not within the requirements of the participating countries. Without this flexibility, administration of the program would be virtually impossible.

The program as approved by ECA will then be sent to the OEEC. At this point, barring substantial changes in the availabilities picture, the Department of Commerce will be committed to issuing export licenses for the approved program. The quarterly programs will, in general, involve dividing the annual program into four parts, not necessarily of equal amounts, and will permit adjustments in the annual program in accordance with the dictates of experience.⁹⁶

II. *Financing*

Once the programs are approved, the next question concerns the methods by which ECA financing is made available. For the first year of operations a total of five billion three hundred million dollars is authorized,⁹⁷ of which one billion is to be realized by a public debt

⁹⁵ § 112(d)(1).

⁹⁶ A small reserve of appropriated funds initially will not be allocated but will be utilized to meet emergency situations or to permit appropriate adjustments upward in a participating country's allocation where the original estimate is found to have been inadequate.

⁹⁷ § 114(c).

transaction⁹⁸ and the remainder by appropriation. Congress actually appropriated four billion dollars,⁹⁹ bringing the total of available funds to five billion dollars, and for a fifteen, rather than twelve, month period, provided, however, that the entire amount could be obligated or expended within twelve months "if the President, after recommendation by the Administrator, deems such action necessary to carry out the purposes" of the Act.¹⁰⁰

Funds will be made available either by the making of grants to a participating country, in which event no repayment is required, or by making loans. The determination as to how much assistance should be by grant and how much by loan to any participating country is left largely to the Administrator, acting in consultation with the National Advisory Council on International and Financial Problems.¹⁰¹ The Act provides that the decision as to whether a country is to be required to make payment for assistance "shall depend upon the character and purpose of the assistance and upon whether there is reasonable assurance of repayment considering the capacity of such country to make such payments without jeopardizing the accomplishment of the purposes" of the Act.¹⁰² The important test is the ability to repay without jeopardizing the accomplishment of the purposes of the Act, since it would be unrealistic to require a participating country to incur dollar

⁹⁸ § 111(c) (2). The \$1 billion is obtained by the Administrator's depositing notes signed by him in that amount with the Secretary of Treasury. The notes carry a low rate of interest. With respect to that part of the \$1 billion which is to be used for financing loans to participating countries, presumably the notes will be paid off at such time as the participating countries pay off the loans. However, a public debt transaction is often used even if there is no real likelihood of the notes being paid off at a subsequent date.

⁹⁹ PUB. L. No. 793, 80th Cong., 2d Sess. Title I (June 28, 1948). The expenditure of \$20,000,000 for Trieste, although authorized by the Act to come out of an appropriation separate from that made available under European recovery, is left as a charge against the European recovery program.

¹⁰⁰ The major, though by no means the only important, difference between the House and Senate was whether the five billion dollars should be for a fifteen or a twelve month period. See H. R. REP. No. 2440, 80th Cong., 2d Sess. (June 19, 1948.)

¹⁰¹ § 111(c) (1). The National Advisory Council on International and Financial Problems was established by the Bretton Woods Agreement Act (1945) 59 STAT. 512, 22 U. S. C. § 286 (1946), to advise the President on international monetary problems. By that act its members are the Secretary of the Treasury (Chairman), the Secretary of State, the Secretary of Commerce, the Chairman of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Directors of the Export-Import Bank of Washington. Section 106 amends the Bretton Woods Agreement Act by providing for the membership of the Administrator in the NAC.

¹⁰² § 111(c) (1).

debts now beyond its expected capacity to repay.¹⁰³ However, once it is determined that a country can afford to contract some dollar debts, then loans are to be used to finance, to the extent practicable, imports of commodities for use in connection with capital development, such as imports of capital equipment and raw materials for capital development, while grants should generally be applied to financing imports of food, fuel, fertilizer, and raw materials not used for capital development.¹⁰⁴ Where the funds are made available by loan, the Export-Import Bank will make and administer the loan,¹⁰⁵ but it will do so entirely on terms specified by the Administrator in consultation with the National Advisory Council. During the first year it has been estimated that twenty to forty per cent of assistance will be in the form of loans, with the expectation that the figure will be closer to twenty than forty per cent, and the balance will be in the form of grants.¹⁰⁶

When the programs have been approved and a decision has been made as to the basis, loan or grant, on which financing will be made, there remains the actual financing of assistance and the transfer¹⁰⁷ of commodities and services. In accordance with the program and the decision regarding financing, and on the basis of discussions between the Economic Cooperation Administration and representatives of the participating country, ECA will issue documents known as "Procurement Authorizations."¹⁰⁸ These documents, which generally cover more than one commodity, describe the commodity or commodities to be purchased and the quantity. They normally also specify the source of procurement. Unless procurement is to be by the United States Government,¹⁰⁹ the procurement authorizations will be issued

¹⁰³ SEN. REP. NO. 935, 80th Cong., 2d Sess. 48 (1948). See also H. R. REP. NO. 1585, 80th Cong., 2d Sess. 91 (1948).

¹⁰⁴ SEN. REP. NO. 935, 80th Cong., 2d Sess. 48 (1948).

¹⁰⁵ *Ibid.*

¹⁰⁶ § 111(c)(2).

¹⁰⁷ Section 111(a)(4), in authorizing the Administrator to transfer any commodity or service, provides that such transfer "shall be signified by delivery of the custody and right of possession and use of such commodity, or otherwise making available any such commodity, or by rendering a service to a participating country or to any agency or organization representing a participating country." By thus specifying a procedure for determining at what point a transfer is effected, the Act provides a simple test for ascertaining at any given point the legal owner of the commodity or service, and eliminates what otherwise might be troublesome problems should the question of ownership be in dispute.

¹⁰⁸ ECA, REG. 1, as amended Oct. 15, 1948, Pt. 1111, 13 FED. REG. 6046 (Oct. 15, 1948).

¹⁰⁹ As surpluses of agricultural commodities in this country develop, the tendency will be to eliminate government procurement.

to the participating country, which will then issue "sub-authorizations" for each commodity to the purchasing or importing agency, public or private.

Procurement may be by the United States Government, undertaken by one of its procuring agencies (but not by the ECA since it is not a procuring agency), by the government of the participating country, or through normal commercial channels. Where procurement is by this Government, and this will be limited principally to procurement of special agricultural commodities by the Commodity Credit Corporation, there is no problem with respect to payment; ECA provides the funds to the procuring agency either at the time the procurement request is made or upon delivery of the commodity. Where procurement is by foreign purchasing missions or entirely through commercial channels, the method of payment becomes more complicated. While considerable flexibility is provided, three general procedures will be followed.

First, the ECA can agree to reimburse the participating government after procurement has been effected in accordance with the terms of the "Procurement Authorization."¹¹⁰ This procedure would require the participating government either to expend its own dollars or to borrow dollars, probably from a United States bank. Under the second and the most common procedure, the ECA will issue letters of commitment to banks, under the terms of which the ECA agrees to repay the banks sums paid by them to suppliers.¹¹¹ Under this procedure, the banks will open letters of credit in favor of suppliers named by the participating country or by its designee, the letters of credit being limited by the terms of a particular procurement authorization. The banks will pay the supplier only where the purchase is made in accordance with the procurement authorization and where the supplier has furnished a certificate assuring compliance with the requirement that the price be not above the market price.¹¹² The bank will not be responsible for fraud on the part of the supplier or for inaccurate statements concerning compliance with the procurement authorization. Responsibility will rest with the participating country and, in the case of a fraudulent or incorrect certificate of compliance, it may be held responsible for remitting to the United States the full

¹¹⁰ § 111(b). This is the procedure generally followed under the Foreign Aid Act of 1947, Pub. L. No. 339, 80th Cong., 1st Sess. (Dec. 17, 1947).

¹¹¹ § 111(b)(1)(i).

¹¹² This is to assure compliance with the Appropriation Act. See note 70 *supra*.

amount of dollars made available by ECA for such procurement, not merely the difference between the market price and the price charged by the supplier.¹¹³ Under the third procedure, the ECA will issue a letter of commitment direct to the supplier. Here the ECA guarantees payment under the terms of a contract between the purchaser and the supplier, provided those terms are fully in accordance with the terms of the procurement authorization. It is likely that this procedure will be followed for sizeable transactions involving bulk shipments, as of petroleum, or for the purchase of a large manufactured article which will require partial progress payments. In cases involving this procedure, it is likely that ECA will be involved in negotiations with the supplier.¹¹⁴

Under the terms of the Act, it is also possible for the Economic Cooperation Administration to set up accounts in private banks and to authorize letters of credit to be issued against such accounts or permit withdrawals of funds from such accounts directly by the participating countries.¹¹⁵ It is unlikely, however, that either of these procedures will be followed since the letter of commitment procedure accomplishes the same purpose without tying up government funds. With respect to withdrawals, there is a general Congressional aversion to placing dollars in the hands of designees of foreign governments.

Thus it will be seen that the supplier does not arrange a sale through the Economic Cooperation Administration. Where procurement is by purchasing missions of the participating country, his contact is with that mission. In most cases, however, the usual trade channels will be followed. The participating country will designate an importer to obtain the commodity in question. The importer will obtain, prior to concluding a contract with a supplier, import and/or foreign exchange permits from his government. He will then purchase dollars from a bank in his own country by payment of local currency.¹¹⁶

In the case of ECA financing by reimbursement, the importer will, upon completion of the transaction provide his government with the

¹¹³ PUB. L. No. 793, 80th Cong., 2d Sess. § 202 (June 28, 1948).

¹¹⁴ For a brief discussion of the letter of commitment procedure see H. R. REP. No. 1585, 80th Cong., 2d Sess. 88-89 (1948).

¹¹⁵ § 111(b)(1)(ii).

¹¹⁶ The amount of the payment in local currency made by the foreign importer need not be equivalent to the amount of the local currency deposit to be made by the participating country where the financial assistance is by grant, although generally it will approximate the amount of the deposit. The amount of the deposit is based on the cost to the United States.

appropriate documents, indicating conclusion of the contract and delivery of the goods, which documents will provide the basis for ECA reimbursement. Where the dollar costs are financed by letter of commitment to banks, the private importer abroad will arrange for an import permit, and his bank, on payment of local currency, will arrange for securing dollars out of the line of credit. Where a letter of commitment to the supplier is utilized, the foreign importer will not arrange for his bank to buy dollars or a line of credit, but he will pay the local currency to his bank for account of his government.

Thus, for the great majority of transactions the supplier will obtain contracts in accordance with normal commercial practices. The only feature novel to normal commercial practice is the fact that the financing is derived from a different source than that generally prevailing in such practice. This will vary the supplier's procedure only to the extent of requiring from him documentation not generally required in private trade.

While the same procedures need not be followed where procurement is made out of funds made available by loan, the present practice is generally to provide that all procurement involving financial assistance be made in accordance with identical procedures. It is true that certain restrictions, such as those governing the supply of wheat and the procurement of surplus agricultural commodities, are not applicable to procurement with "loan funds." Absence of these restrictions, however, does not vary the procurement procedures, but merely broadens the areas of procurement. Experience early revealed that no real advantages would be achieved by providing for different procurement procedures in the case of loan financing, while administrative simplicity is attained by utilizing the same procedures.

While not affecting either procurement procedures or loan terms, the legislation provides that initially funds for loan purposes are not to come out of appropriated funds but rather from funds realized from a public debt transaction.¹¹⁷ Thus the Administrator is authorized to issue notes up to \$1,000,000,000 value for purchase by the Secretary of the Treasury.¹¹⁸ While during the first year funds so realized are to provide the initial source of funds for financing loans,¹¹⁹

¹¹⁷ § 111(c)(2).

¹¹⁸ *Ibid.* The notes are, of course, to be redeemed by the Administrator in accordance with their terms as determined by the Administrator with the approval of the Secretary of the Treasury.

¹¹⁹ § 111(c)(2) provides that the Administrator shall first utilize such funds "as he determines to be available" for loan purposes, and when the amount so determined is

Congress provided for this note issue in order to reduce the cost of the program on the government's books. While the billion dollars appears as a deficit, on the credit side is the liability of the Administrator to redeem the notes.¹²⁰

III. *Guaranties*

There is one additional procedure provided by the Act for financing assistance. Under section 111(b)(3) of the Act the Administrator may make guaranties of investments, not to exceed in the aggregate three hundred million dollars, to any citizen of the United States¹²¹ under the following conditions:

1. The guaranty is limited to the convertibility into dollars of the local currency or credits in local currency received by the investor as income from the investment or as proceeds from the sale or other disposition of the investment, provided that the guaranty is not to exceed the approved initial dollar investment. There is no guaranty of the business risk, but only, in effect, of the future dollar balance of the participating country.

2. The guaranty must be of a new investment in connection with a project which is in furtherance of the purposes of the Act and which is approved both by the participating country concerned and the Economic Cooperation Administration.

3. The guaranties cannot extend beyond April 2, 1962.

This provision in the Act stems from the conviction held by both the legislative and executive branches of this government that European recovery would be materially assisted if private American investments were made in Europe.¹²² This conviction is based not only on the fact that American investments in the participating countries

exhausted appropriated funds are to be used. The determination refers to the decision as to how much of the one billion realized out the public debt transaction is to be reserved for making guaranties of convertibilities of earnings to new private United States investments. This determination can always be revised.

¹²⁰ Section 114(f) provides that three billion dollars out of the sums appropriated are to be placed in a trust fund and considered as expended during the fiscal year 1948, though they are not actually to be expended until the fiscal year 1949, beginning July 1, 1948. In this way, the Government books show the expenditure of that amount in fiscal year 1948, in which year the government had a surplus. The Congress thus sought to prevent the cost of the program creating a deficit on the government books for the fiscal year 1949.

¹²¹ This includes any "corporation, partnership, or other association created under the law of the United States or of any State or Territory and substantially beneficially owned by citizens of the United States." § 111(b)(3)(iii).

¹²² OUTLINE OF EUROPEAN RECOVERY PROGRAM 47; SEN. REP. NO. 935, 80th Cong., 2d Sess. 53 (1948).

would in effect constitute dollar investments which would benefit the exchange position of such countries, since they would supply needed equipment from this country without the expenditure of the dollars of the participating countries, but also because they would provide American "know-how"¹²³ to the Europeans. Since the war the principal barrier to new American investments has been the fear of American business that the exchange controls in effect in each of the participating countries will continue and will prevent any conversion of local currency earnings into dollars. It was, therefore, felt that American investments would be made in participating countries were this government to guaranty the convertibility into dollars of earnings, profits or other funds realized from such investments. The interest shown by American companies in this provision indicates that the belief was probably justified, and makes it likely that the total amount of guaranties will be increased.

Special provision was made in the Act for guaranties of investments, not to exceed fifteen million dollars, to enterprises producing or distributing informational media.¹²⁴ This provision reflects the inability of American publishers of newspapers and magazines and moving picture distributors operating abroad to receive any dollar returns on the sale or distribution of their products. The problem here is essentially not one of new investments, but rather of increased distribution or increased exhibition of the products of investments in the United States. Accordingly, the Conference Committee Report states that the "nature of the information media industry is such that in many cases the investment to which the guaranty will apply will have been made in the United States and the product of the investment sold or exhibited abroad."¹²⁵ Accordingly, the Conference Report established that the guaranty with respect to informational media could be applied to the convertibility of foreign currency earned by the sale or exhibition "to the extent of the dollar cost of production wholly attributable to those specific products."¹²⁶ The Appropriation Act reduced the amount available for guaranties for this purpose from fifteen million to ten million dollars.¹²⁷

¹²³ In this connection, a joint American-British Committee, consisting of representatives of industry and labor, has been established to make available American "know-how" to the British.

¹²⁴ § 111(b)(3).

¹²⁵ H. R. REP. No. 1655, 80th Cong., 2d Sess. 30 (1948).

¹²⁶ *Ibid.*

¹²⁷ PUB. L. No. 793, 80th Cong., 2d Sess. Title I (June 28, 1948).

All guaranties are to be made out of the one billion dollars realized from the sale of notes to the Secretary of the Treasury and from the fee, not to exceed 1% per annum of the amount of the guaranty, charged for the making of such guaranties. It should be noted that in actual practice when a guaranty is made, it is not required that the amount of the guaranty be then raised by the issuance of a note. Only when the guaranty must be discharged will it be necessary to issue a note. However, when a guaranty is made, the authority to realize funds from the sale of notes for loans to participating countries is to be accordingly reduced.

G. ADMINISTRATIVE FEATURES

I. *Domestic*

Apart from the actual sums to be authorized, the question of the administration of the program received the most attention from Congress during consideration of the authorizing legislation. Congress was determined that the administration was not to be placed in the State Department. The executive branch appeared to be equally determined that the State Department should not operate the program.¹²⁸ But whereas the executive branch proposed that the State Department should be in a position to direct the proposed new agency in matters involving foreign policy, Congressional support was clearly for an entirely "free" and independent agency.

The issue was resolved on the basis of a report submitted by the Brookings Institute¹²⁹ at the request of Senator Vandenberg.¹³⁰ In conformance with that report, the legislation provides that there shall be established an Economic Cooperation Administration, headed by an Administrator appointed by the President by and with the advice and consent of the Senate.¹³¹ In order to assure that the Administrator would not be made subject to the directions of any other executive agency or official, it was provided that the Administrator will be responsible to the President and shall have a status in the executive branch of the government comparable to that of the heads of other executive departments. While the Congress cannot provide who shall be participants in cabinet meetings, or, indeed, who shall be a member

¹²⁸ OUTLINE OF EUROPEAN RECOVERY PROGRAM, 125-126.

¹²⁹ *Hearings before Committee on Foreign Relations on United States Assistance in European Economic Recovery*, 80th Cong., 2d Sess. 855 (1948).

¹³⁰ SEN. REP. No. 935, 80th Cong., 2d Sess. 4 (1948).

¹³¹ § 104(a).

of the cabinet,¹³² it can and did provide that the Administrator is to be responsible only to the President and cannot be made subservient to any of the members of the cabinet.¹³³

With respect to the relations of the Administrator to the Secretary of State, section 105(b)(1) provides that the two officials shall keep each other fully and currently informed on matters arising within the scope of their duties which are pertinent to the duties of the other. Recognizing, however, that the Secretary of State's general responsibility for the conduct of foreign affairs might bring him into disagreement, for reasons of foreign policy, with the Administrator, provision is made that the Secretary of State, whenever he believes that "any action, proposed action or failure to act on the part of the Administrator is inconsistent with the foreign policy objectives of the United States,"¹³⁴ is to consult with the Administrator to bring about a resolution of the difficulties. If the differences of view cannot be settled by consultation, the matter is to be referred to the President for final decision. Similarly, in order to assure that the Secretary of State's conduct of foreign policy will not prejudice the Administrator in the performance of his responsibilities, this arrangement is made reciprocal.¹³⁵

On the basis of the implementation of the legislation to date, this arrangement can be expected to work out satisfactorily. While differences of opinion do arise, these are settled by consultation, generally at the lower levels, but if necessary at the top level. One possible difficulty may occur if a case arises involving a "failure to act." It is difficult to envisage what would happen if the Administrator does not contemplate taking certain action which the Secretary of State considers urgent. The ability to provide corrective action in the case of such a failure to act is meaningless unless the matter is disposed of immediately. In such cases, immediate consultation and, if necessary, immediate reference to the President would provide the only solution.

¹³² Legislative recognition of the existence of the President's cabinet is not novel. See REV. STAT. § 160 (1875), as amended, (1907) 34 STAT. 993, (1925) 43 STAT. 1301, 5 U. S. C. § 3 (1946) (setting the salaries of members of the President's cabinet).

¹³³ H. R. REP. NO. 1585, 80th Cong., 2d Sess. 80 (1948).

¹³⁴ § 105(b)(2).

¹³⁵ § 105(b)(3). Comparable provision is made with respect to the Administrator's relations to the agency or officer administering export control (now the responsibility of the Secretary of Commerce). In this case, the arrangement is not made reciprocal since the conflict that might arise between ECA and Commerce would involve ECA disagreement with Commerce's administration of export controls. § 105(c).

II. *Administration Abroad*

The European Recovery Program will be successful only if the European countries cooperate in achieving a general recovery program. If the program is to be a program of European initiative, the United States cannot play a leading role in its execution. At the same time, assistance in such development by the United States was considered of extreme importance. In effect, the Congress adopted General Marshall's position in his Harvard address of rendering "friendly aid."

The Act, therefore, provides for a United States special representative in Europe to be appointed by the President, by and with the advice and consent of the Senate, who shall be both the representative of the Administrator and also the chief representative of the United States Government to any organization of the participating countries.¹³⁶ The Act carefully avoids making the United States a member of the OEEC, but does provide that he shall be accredited to such an organization. In actual practice, Mr. Harriman, the Special Representative, has worked closely with the OEEC and has rendered "friendly advice" to it and its members without actually involving himself in any of the operations of the OEEC.

The Act also provides for special missions in each of the participating countries under a chief who shall be responsible to the Administrator.¹³⁷ In order to assure that the operations of the special missions are harmonized with the regular diplomatic missions, the Act provides for the same exchange of information between the chiefs of the diplomatic and the chiefs of the special missions as is provided between the Secretary of State and the Administrator.¹³⁸ Similarly, a provision is made that in the event of a dispute between the two the matter will be referred to the Secretary of State and the Administrator for decision, with provision, if necessary, for reference to the President.

III. *Congressional Joint Committee*

Because of the importance of the program to the future peace of the world, and in view of the tremendous sums proposed to be expended during the program's existence, the Senate Foreign Relations Committee felt that an annual consideration of the program was not

¹³⁶ § 108. The Special Representative may also be designated the United States representative on the Economic Commission for Europe, and in fact, has been so designated.

¹³⁷ § 109(a).

¹³⁸ § 109(b).

sufficient to provide adequate review by Congress on the operations of the program.¹³⁹ Accordingly, a bipartisan Congressional Joint Committee on Foreign Economic Cooperation was established, consisting of three members from the Senate Foreign Relations Committee, three from the House Foreign Affairs Committee and two from each Appropriations Committee.¹⁴⁰ The Committee is to "make a continuous study of the programs of United States economic assistance to foreign countries,¹⁴¹ and to review the progress achieved in the execution and administration of such programs."¹⁴² While the committee is not to sponsor legislation, it is to aid the several standing committees having legislative jurisdiction over any part of the program, and is to report periodically to the two Houses on its findings and recommendations. It is still too early to determine whether the establishment of a Joint Committee will have a salutary effect on the administration of the various assistance programs, and principally the European Recovery Act, or whether it will become a hindrance to administration. The principal precedent, though there are others, was the Joint Committee on Atomic Energy;¹⁴³ however, in the case of atomic energy there were no appropriate standing committees such as exist for consideration of foreign relations.

The committee can be most useful in assuring the American taxpayer that his money will not be expended for "operation rat-hole," and in providing a channel for avoiding undesirable disclosure of secret information while at the same time keeping representatives of Congress currently informed. Its greatest danger is that it may jump the constitutionally imposed gap between the responsibilities of the legislative and executive branches by becoming too closely involved in the day to day operations and administrative decisions.

IV. *United Nations*

A few have criticized, and more have questioned, the failure of the United States to make its financial assistance available through

¹³⁹ SEN. REP. NO. 935, 80th Cong., 2d Sess. 19 (1948).

¹⁴⁰ § 124(a).

¹⁴¹ Thus the Committee is also to consider the Chinese assistance program and assistance rendered to occupied areas.

¹⁴² § 124(b). The Joint Congressional Committee has a staff which has offices not only in the ECA in Washington, but also in the office of the Special Representative at Paris. The Committee is thus able to follow actively the operations of the program.

¹⁴³ (1946) 60 STAT. 772, 42 U. S. C. § 1815. In the case of atomic energy, there was no existing legislative standing committee which could claim complete jurisdiction. Unlike the Congressional Joint Committee on Foreign Economic Cooperation, the Joint Committee of Congress on Atomic Energy is authorized to report out legislation.

the United Nations. The issue is a political one, and the reasons for the decision need not be examined in detail here. Briefly, the undertaking to provide assistance has been one entered into by the United States alone.¹⁴⁴ As the principal donor, the United States would find itself in an untenable position of not only making substantial contributions through an organization many of whose members are opposed to the concept of "self-help and mutual aid," but also making contributions through an organization for the benefit of certain countries who are not members of that organization.¹⁴⁵ Clearly, therefore, the European program as conceived by the United States and as drafted by the participating countries could not be executed in that form by the United Nations.

The program is obviously consistent with the objectives of the Charter of the United Nations.¹⁴⁶ Moreover, the legislation provides for the fullest possible use of the United Nations and its affiliated agencies in the implementation of the program. Where required by the Charter of the United Nations,¹⁴⁷ all agreements concluded between the United States and participating countries, or groups of such countries, entered into in implementation of the program, are to be registered with the United Nations.¹⁴⁸ Copies of the President's reports to Congress on the operations of the program are to be transmitted to the Secretary General of the United Nations.¹⁴⁹ Authority is given to the President to request the cooperation or use of the services and facilities of the United Nations and its agencies and to make such payments therefor as may be necessary.¹⁵⁰ These are not merely idle promises of good intentions never expected to be carried into practice. Use is being made of the Economic Commission for Europe, and its recommendations as to allocations of those critically short supply raw materials, for which it provides recommendations, are being followed even though some of the countries are not members of the ECE.¹⁵¹ The close relationship envisaged between the administration of the program and the United Nations and its agencies and affiliated organizations is borne out by the fact that, in

¹⁴⁴ Section 116 provides that the President is to take appropriate steps to encourage all the Western Hemisphere countries to provide assistance.

¹⁴⁵ Austria, Italy, Germany, Ireland, Portugal.

¹⁴⁶ U. N. CHARTER Art. 1.

¹⁴⁷ U. N. CHARTER Art. 102, ¶ 1.

¹⁴⁸ § 121(c).

¹⁴⁹ See note 140 *supra*.

¹⁵⁰ § 121(a).

¹⁵¹ See note 145 *supra*.

accordance with specific authority in the Act,¹⁵² the Special Representative in Europe has also been appointed as United States representative on the ECE.

The operations of the Food and Agriculture Organization are also being integrated with the operations of the program. It is anticipated that long term capital developments will be financed through the International Bank for Reconstruction and Development, with which organization close relations are maintained by the Economic Cooperation Administration.¹⁵³ Similarly, in the problem of stabilizing currencies, the Economic Cooperation Administration necessarily works closely with the International Monetary Fund.

Recognizing, therefore, that financially and structurally the United Nations is not, at least at the present time, in a position to undertake a recovery program, the Act provides for the maximum possible use of the United Nations and its organizations; it provides for the provision of information to the United Nations concerning the operations of the Act. And most important, a successful recovery program can only result in a stronger United Nations consisting of democratic nations able to cooperate.

H. THE "QUIDS" PRO QUO

In considering the authorization of over five billion dollars, it was inevitable and appropriate that the Administration and Congress would examine the problem of concrete "*quids*" *pro quo* to be received by the United States in return for its assistance. This examination was not by way of disparaging or minimizing the importance to the United States of the basic objectives of the program: economic stability and world peace. The program was undertaken because of a strong belief in these objectives and not to achieve immediate material benefits to the United States. This, however, did not mean that we should refuse to obtain any material benefit which would not be in conflict with the purposes of the Act.

Consideration of immediate benefits must be divorced from such questions as carriage of a percentage of United States commodities financed by grant on United States flag vessels, or requirements that United States agricultural surpluses be utilized. These latter problems concern protection of our economy in the operation of the program. Consideration of obtaining some immediate and tangible assist-

¹⁵² § 108.

¹⁵³ SEN. REP. No. 935, 80th Cong., 2d Sess. 52 (1948).

ance, the "*quids*" *pro quo*, involved the question of our taking title to local currency deposits made by the participating country where assistance is by grant, the acquisition of materials required by the United States to meet deficiencies or potential deficiencies in our own supplies, and the question of the protection of the property rights of our nationals from action of the participating countries.

I. *Local Currency Deposits*

The requirement that the participating country deposit in a special account local currency deposits commensurate with the dollar value of assistance made available by grant¹⁵⁴ was not proposed by the executive branch with a view to obtaining such deposits for United States Government use. The rationale for the local currency deposit requirement is to avoid increasing economic instability and the likelihood of inflation, which would be furthered by the acquisition of commodities without even any expenditure of local currency. Following the pattern of the United Nations Relief and Rehabilitation Act, Public Law 84 provided for deposits of local currency realized from the sale of commodities furnished on terms not requiring repayment in dollars.¹⁵⁵ This formula was not completely satisfactory; it resulted in many such commodities being sold at nominal values in order to keep down the size of the special deposit and covered only those commodities which were distributed through sale in the recipient country. For this reason, the Foreign Assistance Act provided for local currency deposits in all cases where commodities were made available on a grant basis, regardless of the ultimate method of disposition.¹⁵⁶

While certain technical difficulties arise in determining the local currency equivalent, the general formula is for such deposits to be equal to the dollar cost to the United States of the commodity, service or technical information, including any costs to the United States for processing, storing, transporting, repairing or other servicing, where provided on a grant basis. The deposit is made at the time of notification to the participating country of such dollar costs, computed at the rate of exchange which is the par value agreed to at the time of deposit with the International Monetary Fund.¹⁵⁷

¹⁵⁴ See note 44 *supra*.

¹⁵⁵ (1947) 61 STAT. 128, 22 U. S. C. § 1416 (Supp. 1947).

¹⁵⁶ PUB. L. No. 389, 80th Cong., 1st Sess. § 5(b). (Dec. 17, 1947).

¹⁵⁷ ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND FRANCE ART. IV, § 2(c) (June 28, 1948). In the event there is no par value agreed

The Congress seriously considered having the United States take title to the local currency deposits. This proposition was rejected because it was believed that to give this Government the final control over the expenditure of such large amounts of the currency of another country would be seriously objected to by such country, that it would make the United States responsible for the financial policy of that country, and that any such power in our hands would lead to the criticism that we were invading the sovereignty of a participating country.¹⁵⁸ Accordingly, title to such accounts remains in the participating country, although any disposition of such funds must be made in agreement with the United States.¹⁵⁹

Section 115(b)(6) of the Act does provide that such funds may be used by the United States to pay for its expenses in such country arising out of operations under the Act. This was supplemented by the Appropriation Act, which provides that "not less than 5 per centum of each . . . account" shall be allocated to the use of the United States Government for expenditure for strategic materials and "other local currency requirements" of the United States.¹⁶⁰ While the language of this provision is not without ambiguity, and lacks any clarifying legislative history, the following interpretations appear reasonable: "Expenditure for strategic materials" includes expenditures not only for the acquisition but also for the exploration for and development of the production of strategic materials; requirements of the United States Government cover all such requirements and not just requirements arising out of operations under the Act. But the serious question raised is whether, at such times as the United States Government requires local currency for its expenses, it must first look to the 5 per cent deposits to obtain such currency, or whether it is free to obtain local currency from other available sources, including the acquisition of local currency by payment of dollars. Two problems arise in this connection. First, there are other local currency funds, arising principally out of sales of surplus commodities and lend-lease settlement agreements, which are available to the

with the Fund, or if there are one or more rates of exchange applicable to the purchase of dollars for imports into the participating country, the rate or rates to be used for this purpose are to be mutually agreed upon between the participating country and the United States. ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ITALY ART. IV, § 2(c) (June 28, 1948).

¹⁵⁸ SEN. REP. No. 935, 80th Cong., 2d Sess. 37-38 (1948).

¹⁵⁹ § 115(b)(6). Any unencumbered balance remaining in the local currency account on June 30, 1952 is to be disposed of subject to Congressional approval.

¹⁶⁰ PUB. L. No. 793, 80th Cong., 2d Sess. Title I (June 28, 1948).

United States, and concerning which, in most cases, agreements controlling their expenditure by the United States have been reached.¹⁶¹ Second, in certain countries, the United States has large local currency requirements and the expenditure of dollars for such currencies constitutes an important factor in the dollar balance of payments. The two most striking examples are our agreement with Austria to "pay as we go" for occupation costs¹⁶² and our understanding with Italy to pay dollars to Italy for our debts to Italian prisoners of war now located in Italy in return for Italy's discharging our liability in lira to such persons.¹⁶³ Since the language speaks in terms of allocating 5 per cent of the "recovery" local currency deposit for such expenditures, but does not require that such expenditures must first be met out of that 5 per cent, it is reasonable to conclude that what has been accomplished is provision for another source of local currency without any requirement that the 5 per cent must first be exhausted before this Government can acquire local currency by dollar expenditure. This interpretation is reinforced by those instances in which we already have agreements with the participating country covering the acquisition of local currency for specified purposes.

II. *Materials in Short Supply in the United States*

The most troublesome of the "*quids pro quo*" problems was the question of obtaining materials required by the United States by reason of a deficiency or potential deficiency in its own supply. War-time experience had strikingly demonstrated the dependence of the United States for "strategic materials" on sources of supply in areas beyond the control of the United States. Consequently, in the very first stages of the study of European recovery, attention was devoted by the executive branch to this question. The problem is an extremely complicated one in international relations, involving competition among nations for stockpiling of short supply commodities, cartel practices to maintain prices, and inability of certain countries to de-

¹⁶¹ See, for example, MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC REGARDING SETTLEMENT FOR LEND-LEASE, RECIPROCAL AID, SURPLUS WAR PROPERTY, AND CLAIMS § 5 (May 28, 1946).

¹⁶² AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE FEDERAL GOVERNMENT OF AUSTRIA (June 21, 1947).

¹⁶³ MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF ITALY REGARDING SETTLEMENT OF CERTAIN WAR TIME CLAIMS AND RELATED MATTERS ART. II, § 10 (Aug. 14, 1947).

velop sources of materials coupled with a reluctance to authorize development by foreign nationals. Further, to the extent that provision is made for materials to be acquired by us without an expenditure of dollars, the participating country's dollar receipts would be reduced and its deficit in its dollar balance of payments with us correspondingly increased. Thus, while the desirability of obtaining certain benefits with respect to acquisition of commodities required by this country was clear, the extent and character of the benefits to be sought were uncertain and difficult to formulate concretely.

Four concrete proposals were advanced by the executive branch and adopted in the Act. The first, which was inherent in the language of the proposal by the executive branch and which was made explicit by the Senate Foreign Relations Committee, authorized the repayment of loans made under the Act by the transfer of such materials.¹⁶⁴ The agreement of the participating country to such an arrangement would either have to be sought in specific terms in each loan agreement or pursuant to a general provision in each loan agreement under which the specific terms would be negotiated subsequently. The second concerned a provision to be incorporated, where applicable, in the bilateral agreement between the United States and the participating country whereby the latter would agree to facilitate the transfer to the United States "by sale, exchange, barter or otherwise for stockpiling or other purposes," of materials so required by the United States.¹⁶⁵ The terms and amounts are to be "reasonable" and due regard is to be given to the participating country's "reasonable requirement for domestic use and commercial export of such country."¹⁶⁶ Such agreements could extend beyond the period of the Act. This provision therefore represented a careful arrangement which took into account our need for materials and at the same time recognized the undesirability of requiring by legislation transfers to this country of specified amounts of such materials. It envisaged negotiation of agreements subsidiary to the basic bilateral agreements.

A third provision authorized expenditures from the local currency deposits for "the exploration for and development of new sources of wealth."¹⁶⁷ Such usage was considered non-inflationary and in furtherance of stimulation of desirable economic activity.

¹⁶⁴ § 111(c) (1).

¹⁶⁵ § 115(b) (5).

¹⁶⁶ *Ibid.*

¹⁶⁷ § 115(b) (6).

A fourth provision required the Administrator, in agreement with a participating country, "whenever practicable" to promote with funds made available for the purposes of the Act "an increase in the production in such participating country" of materials required by the United States.¹⁶⁸ This provision, which by its terms is to be considered in furtherance of the provision to be included in the bilateral agreement, recognizes that development of the production of such materials may require dollar expenditures in addition to expenditures out of the local currency accounts. While authority to take such action was covered by the general authorizing provisions of the Act, specific reference served to clarify any doubts which might arise in interpretation of those general provisions and, at the same time, emphasized the importance of acquisition of materials in short supply, or potential short supply, in the United States.

On the basis of these four provisions, therefore, a troublesome "*quid pro quo*" problem was resolved. Authority is made explicit to obtain repayment of loans by transfer of materials; authority exists to utilize local currency deposits or expend ECA dollars for development of the sources of such materials and for their production; and the participating country is to agree to provide means for facilitating the transfer of such materials to the United States. The balance of payments problem was not made more difficult. These provisions were predicated on the basic proposition that dollars would be expended for such materials, or to the same effect, materials would be transferred to the United States in lieu of dollar payments on loans. They recognized that the crux of the materials shortage problem was not insufficient dollar resources on our part, but rather the problem arose from unwillingness on the part of the foreign governments to authorize or facilitate the transfer of such commodities, and the financial inability of some participating countries to develop production or explore for new sources of materials in general world short supply.

The problem, however, became more complicated by insertion by the House of a provision in the Act for an inclusion in the bilateral agreements in addition to that discussed above. Section 115(b)(9) provides that the participating countries, "recognizing the principle of equity in respect to the drain upon the natural resources of the United States and of the recipient countries," agree to negotiate (a) a future schedule of minimum availabilities of such materials for purchase by the United States "at world market prices" so as to pro-

¹⁶⁸ § 117(a).

tect "the access of United States industry to an equitable share of such materials either in percentage of production or in absolute quantities"; (b) "suitable protection for the right of access" for United States citizens¹⁶⁹ "in the development of such materials on terms of treatment equivalent to those afforded" the nationals of the participating country; and (c) "an agreed schedule of increased production of such materials where practicable . . . and for delivery of an agreed percentage of such increased production to be transferred to the United States on a long-term basis in consideration of assistance furnished" under the Act.

The first and third provisions are, in effect, more detailed elaborations of what had already been provided in section 115(b)(5). While they require specification as to amounts to be made available to the United States, including percentages of increased production, they do not require transfers without dollar or other payments by the United States.

The granting of the right of access in a participating country to United States citizens equal to those of nationals of such country may well involve questions of access to sources of materials generally reserved for development by nationals of the participating country concerned. It also raises problems in connection with most-favored-nation agreements between the participating and third countries, which would require equal treatment being granted to the nationals of such third countries.

The entire language of subsection 115(b)(9) leaves to subsequent negotiations the implementation of that subsection, but does, "where applicable," commit the participating country, when requested by the United States, to negotiate agreements in implementation of its terms and objectives.

III. *Arbitration*

Section 115(b)(10) requires the participating country in the bilateral agreements to agree to submit "for the decision of the International Court of Justice or of any arbitral tribunal mutually agreed upon any case espoused by the United States Government involving compensation of a national of the United States for governmental measures affecting his property rights, including contracts with or concessions from such country." While not limited to property rights

¹⁶⁹ See note 121 *supra*.

affected by acts of nationalization, the House Foreign Affairs Committee was primarily concerned with the problem of nationalization.

The provision makes clear that no claim will be espoused unless the available remedies in the administrative and judicial tribunals of the participating country have been exhausted, and unless those remedies have proved unfair and inadequate.¹⁷⁰ In view of the fact that dispositions of enemy (German and Japanese) property are the subject of special treatment,¹⁷¹ claims of United States nationals to an interest in such property have, under the terms of the bilateral agreements, been excepted from application of this section.¹⁷²

A complicating factor in covering this provision in the bilateral agreements is that the United States and certain participating countries have recognized the compulsory jurisdiction of the International Court of Justice under Article 36 of the Statute of that Court.¹⁷³ Accordingly, in the bilateral agreements with those participating countries which have accepted the compulsory jurisdiction of the Court, it is further provided, after a general reciprocal agreement to submit such cases to international arbitration, that such reciprocal undertaking to submit to the decision of the International Court, or to any arbitral tribunal mutually agreed upon, any claim espoused by either government on behalf of one of its nationals is to be in accordance with the terms and conditions of the effective recognition given by each country to the jurisdiction of the International Court under Article 36 of the Statute of that Court. Where the participating country has not recognized the compulsory jurisdiction of the Court, the reference to Article 36 of the Statute of the Court is applicable only to the United States. However, by an interpretative note to these agreements, it is stated that should the participating country accept the compulsory jurisdiction of the International Court under Article 36, the two governments will consult to amend the agreement to provide that for both the acceptance of compulsory arbitration shall be limited by the terms and conditions of such effective recognition

¹⁷⁰ H. R. REP. No. 1655, 80th Cong., 2d Sess. § 31-32 (1948).

¹⁷¹ Thus THE PARIS AGREEMENT ON REPARATION (Jan. 24, 1946), signed by the Western reparation receiving countries, allocated German assets within each reparation receiving country as well as German assets in the neutral countries. Agreements have been reached with certain of the neutrals concerning the disposition of German assets located in their territory.

¹⁷² ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND FRANCE ART. X, § 1 (June 28, 1948).

¹⁷³ STATUTE OF THE INTERNATIONAL COURT OF JUSTICE ART. 36, ¶ 2.

as each has given to the compulsory jurisdiction of the International Court.¹⁷⁴

The reciprocal nature of the undertakings in the bilateral agreement is consistent with United States policy, as already exemplified by its acceptance of the compulsory jurisdiction of the International Court. While the provision has, in the case of the bilateral agreements with the participating countries which had similarly accepted such jurisdiction, served principally to reinforce existing agreements, the principle of compulsory arbitration has been established between the United States and those participating countries which had not previously acted under Article 36.

I. PRIVATE ASSETS IN THE UNITED STATES

As noted previously,¹⁷⁵ the Act provides that in the bilateral agreements the participating countries will, where applicable, take measures to the extent practicable "to locate and identify and put into appropriate use," in furtherance of the recovery program, "assets, and earnings therefrom" which belong to the citizens of the participating country and are situated in the United States, its territories and possessions.¹⁷⁶ This provision resulted from the understandable feeling on the part of Congress that if the citizens of the United States are to be taxed to finance European recovery, then certainly the dollar assets in this country of citizens of the participating countries should be utilized to further the recovery program. At the same time, Congress recognized the undesirability of so dealing with private property in this country of the citizens of the participating countries as would discourage future similar private investments in the United States and would also be radically inconsistent with our traditions concerning the sanctity of private property. Accordingly, the reports of the Senate Foreign Relations and House Foreign Affairs Committees make it clear that the provision does not "require that the assets . . . be liquidated although it is believed that some of the countries will actually undertake liquidation programs with respect to assets which are susceptible of such treatment."¹⁷⁷ Thus it would be undesirable to liquidate investments which continue to earn dollars and which

¹⁷⁴ See, for example, ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ITALY, Annex, § 3 (June 28, 1948).

¹⁷⁵ See note 38 *supra*.

¹⁷⁶ § 115(b)(4).

¹⁷⁷ H. R. REP. NO. 1585, 80th Cong., 2d Sess. 97 (1948); SEN. REP. NO. 935, 80th Cong., 2d Sess. § 4 (1948).

over a period of years provide a source of dollars to participating countries. At the other extreme, dollars in a checking account can be utilized only if liquidated.¹⁷⁸

The United States, as is made clear in the bilateral agreements, is not obligated to assist the participating countries in the location, identification or disposition of such assets.¹⁷⁹ Nevertheless, the United States does in fact render assistance to the participating countries with respect to those assets which are blocked by the United States. In order to prevent Germany from obtaining by force or duress the use of assets in the United States belonging to residents of countries overrun by Germany, the Treasury Department placed all such assets under its control and prohibited any transactions in such assets unless specifically licensed by it.¹⁸⁰ The title to those assets in which enemy interests were discovered was vested by the Alien Property Custodian.¹⁸¹

At the termination of hostilities, agreements were entered into with most of the "blocked countries" to permit generally the unblocking of the assets of its citizen residents in such a manner as would assure that any assets in which there was a German or Japanese interest would be uncovered to permit vesting action by this Government. These agreements, commonly referred to as "certification agreements," provided that the owner of the blocked asset would submit proof to his government of the absence of any German or Japanese interest in such asset and his government, if satisfied with such proof, would so certify to the holder of the asset in this country, and the asset would thereupon be unblocked.

This procedure, therefore, resulted in providing a means whereby the governments of blocked countries would become aware of the assets in this country of their citizen residents and thereby permitted more effective enforcement of their exchange controls. However, and partially because of this result, many holders of such assets did not seek certification of their assets. Many reasoned that certification would involve them in the payment of taxes on such assets; in some

¹⁷⁸ Liquidated, not confiscated. It is assumed that the owner of the asset will receive reimbursement in local currency.

¹⁷⁹ ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND FRANCE ART. II, § 1(a) (3) (June 28, 1948).

¹⁸⁰ For a general discussion of Treasury Department blocking controls see Reeves, *The Control of Foreign Funds by the United States Treasury* (1945) 11 LAW & CONTEMP. PROB. 17.

¹⁸¹ *Ibid.* For a general discussion of United States vesting policy see Myron, *The Work of the Alien Property Custodian* (1945) 11 LAW & CONTEMP. PROB. 76.

cases it would result in disclosing that they had failed to report such assets to their governments in accordance with local requirements, with possible resultant heavy penalties for such nondisclosure; for others disclosure of such assets might lead to political difficulties. For these and perhaps other reasons, certification of a large number of dollar holdings in this country was not sought; the holders preferred to take their chances on future United States policy with respect to uncertified blocked assets.

Both the Congress and the executive branch sought a procedure which would assure that such gambling on future United States policy would not pay off. In a published letter to Senator Vandenberg, the Secretary of the Treasury on February 2, 1948 announced the policy of the executive branch on this question.¹⁸² The program, which was satisfactory to the Congress and thereby eliminated the need to insert in the Act any provision to meet this problem, provided that as of June 1, 1948¹⁸³ (later amended to read September 30, 1948)¹⁸⁴ all remaining blocked assets would be turned over to the Office of Alien Property. A new census of such assets would be conducted in this country and, with respect to assets revealed by that census to belong to citizen residents of participating countries receiving financial assistance, the information concerning such assets would be made known to the participating countries, which could then, in accordance with arrangements to be made with the Office of Alien Property, provide for the certification of such assets.¹⁸⁵

Certain problems may arise with respect to attempts of the participating countries to utilize assets in this country of their citizens, where such citizens are resident outside of the participating country. Most striking is the case of a citizen of such a country who is now resident in this country and proposes to remain here. While amendments were proposed on the House floor to prevent any disposition of the assets of such a person by a participating country, they were all defeated.¹⁸⁶ Nevertheless, any attempt of a participating government to require one of its citizens resident here to turn over the dollar earnings of, for example, his corner grocery store in return for local currency

¹⁸² *Hearings before Committee on Foreign Relations on United States Assistance to European Economic Recovery*, 80th Cong., 2d Sess. 516 (1948).

¹⁸³ U. S. Treasury Press Release, Press Service No. S-646, March 1, 1948.

¹⁸⁴ U. S. Treasury Press Release, Press Service No. S-704, Apr. 27, 1948.

¹⁸⁵ It was not proposed to disclose any information to a participating country not receiving financial assistance (*i.e.*, Portugal and Switzerland).

¹⁸⁶ 94 Cong. Rec. 3938-3940 (March 31, 1948).

would justify this Government's objecting to such a procedure. Of less direct concern to us, but not unimportant, is the comparable case of the national of a participating country with assets here who is resident in a non-participating country. And technically troublesome is the case of a citizen of one participating country resident in another participating country, since it poses the question of which country is to attempt to utilize his assets. In all probability, the answers to these questions will not be forthcoming except on a case by case disposition.

J. PRIVATE RELIEF

The Congress was of the opinion that, at least with respect to the relief aspects of the program, encouragement of private relief might well supplement assistance rendered directly through the operations of the program. While recognizing that private relief recipients are, in large part, designated on the basis of relationship or acquaintance with the senders and not on the basis of need, and that relief parcels do not necessarily contain the most needed commodities, the Congress believed that the net effect of increased private relief would assist in alleviating hunger, disease and cold in the participating countries. Accordingly, section 117(c) authorized the Administrator to pay ocean freight charges of supplies made available to a participating country receiving assistance in the form of grants through a voluntary non-profit relief agency registered with and recommended by the Advisory Committee on Voluntary Foreign Aid,¹⁸⁷ or of relief packages conforming to specifications as to weight, size and content to be set by the Administrator.¹⁸⁸ The section provides further that agreements should be reached "where practicable" to utilize the local currency deposits to cover transportation costs in the participating country for both of the above categories of relief, and to provide for free entry of such supplies.

With respect to the voluntary non-profit organizations, the mechanics for subsidizing ocean freight costs are simple: reimbursement of the agency for such costs. In the case of private relief packages, postal rates have been reduced to reflect the cost chargeable

¹⁸⁷The Advisory Committee on Voluntary Foreign Aid was established under authority of similar letters from the President to the Secretaries of State and Agriculture on May 14, 1946, "to tie together the Governmental and private programs in the field of foreign relief." It was made responsible for certain of the functions previously exercised by the President's War Relief Control Board, which was terminated on May 14, 1946. Department of State Regulation 182.6, May 14, 1946.

¹⁸⁸ECA REG. 2, Pt. 1113, 13 FED. REG. 3728 (July 3, 1948).

to ocean freight costs, and accordingly, the Post Office receives reimbursement from ECA for the ocean freight costs. The bilateral agreements with countries to receive some assistance in the form of grants provide for future negotiations to provide free entry of relief supplies in the above categories, including the provision of duty free treatment under appropriate safeguards.¹⁸⁹ Disposition of the local currency deposits to cover inland transportation costs can be achieved by agreement under section 115(b)(6).

K. TERMINATION OF ASSISTANCE

The program is to terminate on June 30, 1952, or at such earlier date as Congress may determine by concurrent resolution.¹⁹⁰ Authority is given to complete, during a twelve month period following the date of termination, delivery of any commodities and services authorized for shipment or delivery to a participating country prior to such date.¹⁹¹

In addition to such statutory termination of assistance, the Act authorizes, in certain circumstances, termination of assistance to any one or more participating countries by administrative decision. In considering what steps should be taken in the event a participating country fails to comply with its undertakings to the other participating countries, or to the United States, the Congress wisely provided the Administrator with power "to let the punishment fit the crime."

In determining the form and measure of assistance to be provided to any participating country, the Administrator is to take into account "the extent to which such country is complying with its undertakings. . . ." ¹⁹² If a country is not adhering to its agreement with the United States or is diverting from the purposes of the Act assistance made available to it, all assistance is to be terminated, if "in the circumstances remedial action other than termination will not more effectively promote the purposes" of the Act.¹⁹³ Thus, in the event of a violation of the bilateral agreement, the Administrator may seek appropriate corrective measures before definitively terminating all assistance. In most, if not all, circumstances, decreasing the amount

¹⁸⁹ ECONOMIC COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND FRANCE ART. VI, § 2 (June 28, 1948).

¹⁹⁰ § 122(a).

¹⁹¹ *Ibid.*

¹⁹² § 118.

¹⁹³ *Ibid.*

of assistance, or suspension of assistance, or mere notification of our concern might well be sufficient to result in the necessary corrective steps. Obviously, in the event of a violation of a bilateral agreement, the Administrator will make every effort to correct the violation before terminating assistance, for termination of assistance may well mean that the program has failed.

The Administrator is also directed to terminate assistance where "because of changed conditions, assistance is no longer consistent with the national interest of the United States."¹⁹⁴ The legislation does not spell out what these changed conditions might be; however, we can easily envisage what certain of them might be. Changed conditions in the United States, such as would be occasioned by United States entry into a war, may require termination, or if a participating country were to go Communist and find its government opposed to the program, assistance would probably be terminated.¹⁹⁵

L. CONCLUSION

The 81st Congress will consider, as one of its first major problems, the advisability of authorizing an appropriation for the second year of the European recovery program.

In considering the Economic Cooperation Act of 1948, the Senate Foreign Relations Committee of the 80th Congress stated, "it is probable that no legislative proposal coming before the Congress has ever been accompanied by such thoroughly prepared documentary materials."¹⁹⁶ But those materials were in the nature of forecasts and estimates, not only as to the magnitude of the program, but also as to its structure and operating techniques. The 81st Congress will have available to it the benefit of almost a year's experience of operations under the Act. At the time of Congress' consideration of new legislation, the OEEC will probably have completed a study of the goals of a four year program; it and the individual participating countries will have completed their reports of the operations of the program during its initial periods. By the time of the convening of the 81st Congress, the Economic Cooperation Administration will have been through its

¹⁹⁴ *Ibid.*

¹⁹⁵ See statement by the Administrator. N. Y. Times, Sept. 11, 1948, p. 6, col. 7. His statement reveals his view that the same consequences of termination of assistance would follow if a fascist government were to come into power in one of the participating countries. He further indicated that the presence of communist members in a government would not necessarily lead to a termination of assistance.

¹⁹⁶ SEN. REP. NO. 935, 80th Cong., 2d Sess. 4 (1948).

organization period; procedures for administering assistance should be beyond the trial and error stage and reasonably well established.

European recovery will still be a program and still a long time off from being an accomplished fact. But the emphasis of the program will be changing; more and more of the assistance will be directed toward long term projects and capital development. The relief aspects of the program will become less and less important; the recovery aspects will be increasing proportionately.

It is to be hoped that Congress will not concern itself principally with the details of the program, except where obvious corrective action is required. In general, the legislation has stood up well in operation, and a section by section review of the Act would be superfluous. The ECA and the Joint Committee will be able to advise fully with respect to those sections which experience has proved to be cumbersome, unwise or undesirable.

Rather, the primary consideration should be given to the broader issues of European recovery, such as the facilitation of the recovery features, of increasing American private investments in Europe, and of increasing the dollar earnings of the participating countries by increased exports to the United States by the participating countries. If executive and Congressional study of the program is devoted to the broader problems, the American people, who have invested heavily in the program, and who will, in all likelihood, continue to do so, can be more certain that their investment will pay the dividend of a better world for them and their children.