508074 12308 C-GAO

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-196401

December 13, 1979

Do not release outside GAO unless publicly announced by the

The Honorable Frank Church, Chairman
Committee on Foreign Relations
United States Senate

Dear Mr. Chairman:

You have requested our opinion concerning the legality of continued United States contributions to the International Fund for Agricultural Development (Fund). Contributions to the Fund were authorized by section 301 of the International Development and Food Assistance Act of 1975, Pub. L. No. 94-161, 89 Stat. 849, 856. The act conditioned United States participation on total donor commitments to the Fund of $1 billion, and equitable sharing of the burden among the different categories of donors.

You indicate that Iran is in default in fulfilling its commitment to the Fund. You ask whether the United States can make further contributions to the Fund if Iran's default lowers total donor contributions below $1 billion, in view of a condition on contributions contained in subsection (f) of section 103 of the Foreign Assistance Act of 1961, as amended. You further ask whether Iran's default, if not made up for by other donors in the same category as Iran, (OPEC members), would violate another condition of subsection (f) requiring equitable burden sharing among the categories of donors.

For the reasons indicated below, we conclude that the United States may complete its full contribution to the Fund despite the default by Iran, and that the default does not violate the equitable burden sharing provision of the act.

Section 302 of the International Development and Food Assistance Act of 1975, supra, amended section 103 of the Foreign Assistance Act of 1961 to authorize the President to participate in and contribute up to $200 million to the International Fund for Agricultural Development. The act authorized an appropriation of up to $200 million for the contribution. Subsection (f) of section 103 provided, in pertinent part:

"(f) No funds may be obligated to carry out subsection (e) unless--

* * * * *

"(3) all donor commitments to the International Fund for Agricultural Development total at least $1,000,000,000 equivalent in convertible currencies, except that the United States contribution shall be proportionally reduced if this combined goal is not met; and

"(4) there is equitable burden sharing among the different categories of contributors."

The Second Supplement Appropriations Act, 1976, Pub. L. No. 94-303, 90 Stat. 597, 603, appropriated $200 million, to remain available until expended, for payment to the Fund "as authorized by section 103(e) of the Foreign Assistance Act of 1961, as amended."

As is our usual practice we requested the views of the agency with administrative responsibility for the program in question, in this case the Agency for International Development (A.I.D.). In a letter from its General Counsel, A.I.D. stated that (1) the conditions on United States contributions to the Fund were repealed in 1978 and were no longer applicable, (2) initial commitments to the Fund of $1 billion completely fulfilled the conditions in the act and the United States was therefore authorized to continue drawing down funds in favor of the Fund, and (3) the United States pledge constitutes an obligation of the United States in the full amount of $200 million and the subsequent default by another donor can have no effect.

In response to your first question, the meaning of condition (3) in subsection 103(f), quoted, supra, is clear from the language of the statute. First, the statute provides that funds are not to be obligated to participate in the Fund unless commitments to the Fund by all donors total at least $1 billion. However, there is an exception which states that the United States contribution shall be reduced if "this combined goal" is not met. The "combined goal" must mean donor commitments of $1 billion because this is the only goal referred to in the condition. Therefore, the exception in condition (3) means that if total donor commitments of $1 billion cannot be obtained, the United States may still make a commitment to the Fund but its pledge and contribution must be reduced below the $200 million authorized.

Under this interpretation, the exception applies only when a total of $1 billion in commitments has not been reached; that is, when donor nations other than the United States have not pledged at least $800 million. If, however, other donors commit $800 million, condition (3) is fulfilled and the United States may commit the full $200 million authorized for the Fund.

This interpretation of condition (3) is consistent with the remainder of subsection (f). Each of the conditions in the subsection are pre-conditions to the United States participation in the Fund; that is, none of the funds appropriated for participation in the Fund may be obligated until

all of the conditions are met. Once the conditions are met, however, the United States may make its contribution without any further limitations. On the other hand, any interpretation of condition (3) which would require reduction of the United States contribution because of a subsequent default by another donor would mean that condition (3), unlike the other conditions, could not be fulfilled until every other donor state had fully contributed all the money it had pledged.

We are therefore in agreement with AID's position that once there were donor commitments to the Fund of $1 billion, condition (3) was fulfilled and the United States was authorized to commit the full $200 million to the Fund. Subsequent default by Iran, after the conditions were already fulfilled, does not affect the obligation of the United States to honor its commitment.

We also agree with A.I.D.'s position that United States execution of the Articles of Agreement of the Fund, and commitment of $200 million, after the conditions in subsection 103(f) had been fulfilled, constituted a legal obligation of the United States which must now be fulfilled. Our examination of the Agreement ([1976-77] 7 U.S.T. 8435, T.I.A.S. No. 8765) indicates that the United States commitment was unconditional. There is no provision permitting the United States or any other donor to reduce its contribution if another country does not fulfill its commitment. In fact, the Agreement specifies a different remedy when a donor fails to fulfill its commitment. Article 9, section 2, states that if a member state fails to fulfill any of its obligations to the Fund, the Governing Council of the Fund may suspend that state's membership. Since the United States is legally obligated to the Fund for a full $200 million, any reduction now in the United States contribution might itself constitute a default.

In sum, with respect to your first question, it is our opinion that condition (3) in subsection 103(f) of the Foreign Assistance Act has been fulfilled, that the United States is legally obligated to the Fund for $200 million, and that the United States is authorized to complete its contribution to the Fund regardless of whether the default by Iran reduces total donor contributions below $1 billion.

With regard to your second question, the final condition in subsection 103(f) provides that no funds may be obligated for participation in the Fund unless there is equitable burden sharing among the different categories of donors. The categories of donors referred to are the industrialized nations in Category I and the OPEC nations in Category II.

For the same reasons given in answering your first question, we are of the opinion that equitable burden sharing was a pre-condition to United States participation in the Fund, and that the condition was met before the United States committed itself to the Fund. The United States commitment to the Fund is unconditional, and the default by Iran, even it it results

in less than equal sharing of the burden, does not permit the United States to reduce its contribution.

Moreover, even had the condition not yet been fulfilled, we do not believe that Iran's default is so substantial as to violate the equitable burden sharing provision. In our view this condition requires approximate parity between the donor categories; it does not require dollar-for-dollar matching. Our examination of the legislative history of the provision indicates that the Congress expected that Category I and Category II contributions would be approximately, but not exactly, equal.

It is our opinion that the default by Iran, even if not replaced by other OPEC donors, does not violate the equitable burden sharing condition of the authorizing legislation.

In reaching these conclusions we have not overlooked significant portions of legislative history which refer to subsections 103(c)(3) and (4) in terms from which one might infer that distinction was being specifically made between "commitments" and "contributions." A close reading of that history, however, against the statutory language enacted leads us to conclude, as set forth above, that such distinction was neither intended nor provided.

Sincerely yours,

Deputy Comptroller General
of the United States