

from man-portable air-defense systems that were in Libya as of March 19, 2011.

“(vi) Such recommendations for legislative or administrative action as the President considers appropriate to implement the strategy required by paragraph (1).

“(C) FORM.—The report required by this paragraph shall be submitted in unclassified form, but may include a classified annex.

“(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

“(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.”

[Memorandum of President of the United States, Apr. 20, 2012, 77 F.R. 28757, delegated the reporting functions conferred upon the President by section 1235(c) of Pub. L. 112-81, set out above, to the Secretary of State.]

### SUBCHAPTER III—GENERAL AND ADMINISTRATIVE PROVISIONS

#### PART I—GENERAL PROVISIONS

### § 2351. Encouragement of free enterprise and private participation

#### (a) Policy of United States

The Congress of the United States recognizes the vital role of free enterprise in achieving rising levels of production and standards of living essential to economic progress and development. Accordingly, it is declared to be the policy of the United States to encourage the efforts of other countries to increase the flow of international trade, to foster private initiative and competition, to encourage the development and use of cooperatives, credit unions, and savings and loan associations, to discourage monopolistic practices, to improve the technical efficiency of their industry, agriculture, and commerce, and to strengthen free labor unions; and to encourage the contribution of United States enterprise toward economic strength of less developed friendly countries, through private trade and investment abroad, private participation in programs carried out under this chapter (including the use of private trade channels to the maximum extent practicable in carrying out such programs), and exchange of ideas and technical information on the matters covered by this subsection.

#### (b) Action by President to facilitate participation to maximum extent

In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this chapter, the President shall—

(1) make arrangements to find, and draw the attention of private enterprise to, opportunities for investment and development in less-developed friendly countries and areas;

(2) establish an effective system for obtaining adequate information with respect to the activities of, and opportunities for, nongovernmental participation in the development process, and for utilizing such information in the planning, direction, and execution of programs carried out under this chapter, and in the co-

ordination of such programs with the ever-increasing developmental activities of nongovernmental United States institutions;

(3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable treatment in, friendly countries and areas participating in programs under this chapter;

(4) seek, consistent with the national interest, compliance by other countries or areas with all treaties for commerce and trade and taxes, and take all reasonable measures under this chapter or other authority to secure compliance therewith and to assist United States citizens in obtaining just compensation for losses sustained by them or payments exacted from them as a result of measures taken or imposed by any country or area thereof in violation of any such treaty;

(5) to the maximum extent practicable carry out programs of assistance through private channels and to the extent practicable in conjunction with local private or governmental participation, including loans under the authority of section 2151t of this title to any individual, corporation, or other body of persons;

(6) take appropriate steps to discourage nationalization, expropriation, confiscation, seizure of ownership or control, of private investment and discriminatory or other actions having the effect thereof, undertaken by countries receiving assistance under this chapter, which divert available resources essential to create new wealth, employment, and productivity in those countries and otherwise impair the climate for new private investment essential to the stable economic growth and development of those countries;

(7) utilize wherever practicable the services of United States private enterprise (including, but not limited to, the services of experts and consultants in technical fields such as engineering); and

(8) utilize wherever practicable the services of United States private enterprise on a cost-plus incentive fee contract basis to provide the necessary skills to develop and operate a specific project or program of assistance in a less developed friendly country or area in any case in which direct private investment is not readily encouraged, and provide where appropriate for the transfer of equity ownership in such project or program to private investors at the earliest feasible time.

#### (c) International Private Investment Advisory Council on Foreign Aid; establishment; composition; selection of members by Administrator; duration of service; Chairman; duties of Council; compensation; travel and other expenses; funds for payment of expenses of Council

(1) There is hereby established an International Private Investment Advisory Council on Foreign Aid to be composed of such number of leading American business specialists as may be selected, from time to time, by the Administrator of the Agency for International Develop-

ment for the purpose of carrying out the provisions of this subsection. The members of the Council shall serve at the pleasure of the Administrator, who shall designate one member to serve as Chairman.

(2) It shall be the duty of the Council, at the request of the Administrator, to make recommendations to the Administrator with respect to particular aspects of programs and activities under this chapter where private enterprise can play a contributing role and to act as liaison for the Administrator to involve specific private enterprises in such programs and activities.

(3) The members of the Advisory Council shall receive no compensation for their services but shall be entitled to reimbursement in accordance with section 5703 of title 5 for travel and other expenses incurred by them in the performance of their functions under this subsection.

(4) The expenses of the Advisory Council shall be paid by the Administrator from funds otherwise available under this chapter.

**(d) Engineering and professional services of United States firms**

It is the sense of Congress that the Agency for International Development should continue to encourage, to the maximum extent consistent with the national interest, the utilization of engineering and professional services of United States firms (including, but not limited to, any corporation, company, partnership, or other association) or by an affiliate of such United States firms in connection with capital projects financed by funds authorized under this chapter.

**(e) Contracts on basis of competitive selection procedures**

(1) The Congress finds that significantly greater effort must be made in carrying out programs under subchapter I of this chapter to award contracts on the basis of competitive selection procedures. All such contracts should be let on the basis of competitive selection procedures except in those limited cases in which the procurement regulations governing the agency primarily responsible for administering subchapter I of this chapter allow noncompetitive procedures to be used.

(2) Repealed. Pub. L. 97-113, title VII, § 734(a)(1), Dec. 29, 1981, 95 Stat. 1560.

(Pub. L. 87-195, pt. III, § 601, Sept. 4, 1961, 75 Stat. 438; Pub. L. 88-205, pt. III, § 301(a), (b), Dec. 16, 1963, 77 Stat. 385; Pub. L. 88-633, pt. III, § 301(a), (b), Oct. 7, 1964, 78 Stat. 1012; Pub. L. 89-583, pt. III, § 301(a), Sept. 19, 1966, 80 Stat. 803; Pub. L. 90-137, pt. III, § 301(a), Nov. 14, 1967, 81 Stat. 458; Pub. L. 95-424, title I, § 102(g)(2)(B), title V, § 501, Oct. 6, 1978, 92 Stat. 942, 956; Pub. L. 97-113, title VII, § 734(a)(1), Dec. 29, 1981, 95 Stat. 1560.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (d), was in the original "this Act", meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1981—Subsec. (e)(2). Pub. L. 97-113 struck out par. (2) which required reports to Congress on Agency for International Development contracts over \$100,000 entered into without competitive selection. See section 2394(a)(2)(F) of this title.

1978—Subsec. (b)(5). Pub. L. 95-424 substituted "section 2151t" for "section 2161".

Subsec. (e). Pub. L. 95-424 added subsec. (e).

1967—Subsec. (c)(3). Pub. L. 90-137 substituted reference to section 5703 for former section 73b-2 of title 5.

1966—Subsec. (b)(2) to (8). Pub. L. 89-583, § 301(a)(1)-(3), added par. (2), redesignated former pars. (2) to (6) as (3) to (7), respectively, and added par. (8).

Subsec. (c). Pub. L. 89-583, § 301(a)(4), substituted provisions relating to International Private Investment Advisory Council on Foreign Aid for former provisions relating to Advisory Committee on Private Enterprise in Foreign Aid.

1964—Subsec. (c)(4). Pub. L. 88-633, § 301(a), substituted "June 30, 1965" for "December 31, 1964".

Subsec. (d). Pub. L. 88-633, § 301(b), added subsec. (d).

1963—Subsec. (b). Pub. L. 88-205, § 301(a), substituted "to the maximum extent practicable" for "wherever appropriate" in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 88-205, § 301(b), added subsec. (c).

**Statutory Notes and Related Subsidiaries**

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-424 effective Oct. 1, 1978, see section 605 of Pub. L. 95-424, set out as a note under section 2151 of this title.

TERMINATION OF ADVISORY COUNCIL

Advisory council in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

**Executive Documents**

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

**§ 2352. Small business**

**(a) Assistance for participation in furnishing of commodities, defense articles, and services**

Insofar as practicable and to the maximum extent consistent with the accomplishment of the purposes of this chapter, the President shall assist American small business to participate equitably in the furnishing of commodities, defense articles, and services (including defense services) financed with funds made available under this chapter—