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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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IN REPLY  
REFER TO: B-138942

October 26, 1978

OF GENERAL COUNSEL

Norman J. Philion  
Executive Vice President  
Air Transport Association of America  
1709 New York Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Philion:

This is in response to your letter dated August 10, 1978, in which you question whether certain air freight shipments were in compliance with section 5 of Pub. L. 93-623 (codified at 49 U.S.C. § 1517). You advised us that freight shipments financed by foreign military sales credits to Korea and Taiwan have been transported by foreign air carriers. Other products, financed through the Export-Import Bank of the United States, have also been transported by foreign air carriers.

Pub. L. 93-623, at section 5, requires the use of U.S.-flag air carriers for U.S.-financed commercial foreign air transportation. One kind of U.S. financing described in section 5 is where the foreign air transportation is furnished:

"\* \* \* to or for the account of any foreign nation, or any international agency, or other organization, of whatever nationality, without provisions for reimbursement \* \* \*"

Our Office has previously held that section 5, does not require the use of U.S.-flag air carriers where the foreign air transportation is paid for out of funds which are later reimbursed by a foreign government, international agency, or other organization. B-138942, June 13, 1978.

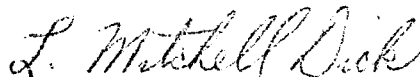
In light of this decision, the military shipments with which you are concerned need not be transported in U.S.-flag air carriers. The President is authorized by 22 U.S.C. § 2763 to finance the procurement of defense articles and services through credit sales. The foreign countries purchasing the products are required to pay for them under the terms set out in the statute. Thus, where air freight shipments are financed by foreign military sales credits, section 5 of Pub. L. 93-623 would not require the use of U.S.-flag air carriers.

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Another kind of U.S. financing described in section 5 is where the foreign air transportation furnished is "\* \* \* in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States \* \* \*."

Although the Export-Import Bank is an agency of the United States (12 U.S.C. § 635(a)(1)), the payment in this case is not actually a payment by the Bank but a payment by the foreign purchaser with the Bank acting as an agent in physically disbursing the funds. This situation is analogous to a payment by a domestic National Bank, an instrumentality of the United States, lending a purchaser of products the money to pay a supplier in the form of a cashier's check payable at the Bank. Although the National Bank would physically disburse funds to the supplier, it is the purchaser's funds that are being disbursed, and the transaction is properly characterized as involving a payment made by the purchaser. Thus, where air freight shipments are financed by private parties through loans arranged through a U.S. bank, section 5 of Pub. L. 93-623 would not require the use of U.S.-flag air carriers.

Sincerely yours,



L. Mitchell Dick  
Assistant General Counsel