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Report To The Chairman Subcommittee On Oversight And Investigation Committee On Interior And Insular Affairs House Of Representatives

Mineral Leasing Act Reciprocity Provision--Implementation And Constraints

The Mineral Leasing Act of 1920 allows foreigners to participate in developing certain minerals on federally leased lands through stock interest in U S corporations, if their country reciprocates by not denying U S citizens similar investment opportunities

A number of countries impose limitations or restrictions on foreign mineral investments, but the Department of the Interior has generally concluded that such conditions do not violate the reciprocity provision of the Mineral Leasing Act of 1920 Since the law was enacted, only once has a country been formally declared nonreciprocal--Kuwait in 1983

This report discusses (1) conditions imposed on foreign investment in certain countries, (2) the procedures Interior uses in implementing the mineral reciprocity provision, (3) past reciprocity determinations, and (4) how this provision fits into a network of U S laws and treaties designed to encourage the flow of international trade and investment

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WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-215117

The Honorable Edward J. Markey
Chairman, Subcommittee on Oversight
and Investigation
Committee on Interior and Insular
Affairs
House of Representatives

Dear Mr. Chairman:

In response to your March 7, 1983 request, we have reviewed the implementation of the reciprocity provision of the Mineral Leasing Act of 1920. As agreed with your office, we focused our review on (1) the procedures used by the Department of the Interior in making its determinations on mineral reciprocity, (2) the extent of interagency coordination, (3) investment restrictions encountered by U.S. firms in selected foreign countries, and (4) the views of U.S. firms regarding the adequacy and usefulness of the mineral reciprocity provision.

As arranged with your office, no further distribution of this report will be made for 7 days from the date of issue unless you publicly announce its contents earlier.

Sincerely yours,

Frank C. Conahan

Frank C. Conahan
Director

GENERAL ACCOUNTING OFFICE
REPORT TO THE CHAIRMAN
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATION
COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

MINERAL LEASING ACT RECIPROCITY PROVISION--IMPLEMENTATION AND CONSTRAINTS

D I G E S T

The Mineral Leasing Act of 1920 allows foreign citizens or businesses to participate in developing certain minerals on federally leased lands through stock interest in U.S. corporations, if the foreigners' country reciprocates by not denying U.S. citizens similar or like investment opportunities.

GAO was asked by the Chairman of the Subcommittee on Oversight and Investigation, House Committee on Interior and Insular Affairs, to review the implementation of the mineral reciprocity provision.

USE OF RECIPROCITY PROVISION

The Department of the Interior, in the 64 years it has implemented this mineral reciprocity provision, has only once formally declared a nation nonreciprocal and sought to apply sanctions--Kuwait in 1983.

A number of countries impose limitations or restrictions on foreign mineral investments. However, past mineral reciprocity determinations have generally concluded that such investment conditions are not unduly restrictive and do not violate the reciprocity provision of the Mineral Leasing Act. (See ch. 2.)

Although the mineral reciprocity provision may provide some useful negotiating leverage, U.S. officials and industry representatives fear its use could have adverse effects. Its use could conflict with broader U.S. foreign objectives or influence other countries to adopt stronger retaliatory measures which would worsen conditions for U.S. investment abroad.

The reciprocity provision of the Mineral Leasing Act is only a part of the network of statutes and international treaties available to help facilitate U.S. investments abroad and induce changes in those countries believed to have restrictive investment policies.

ADMINISTERING THE RECIPROCITY PROVISION

In reviewing the implementation of the reciprocity provision of the Mineral Leasing Act of 1920, GAO found that Interior's procedures were revamped in 1982. While no specific timeframe has been established for completing reciprocity reviews, those initiated since the procedures were changed have been completed within 4 to 7 months.

GAO also found that in the past Interior relied heavily on the State Department to help compile, translate, and analyze the laws, regulations, and customs of a foreign country being reviewed. However, Interior indicated that this is no longer the case, especially in the interpretive aspects. For example, during recently completed reviews of Sweden and Cyprus, Interior received no legal or analytical assistance from State, but State did supply useful informational cables from U.S. embassies. Interior now also seeks information from others through the public comment process. Based on GAO's discussions with officials from other federal agencies, it appears that Interior had sufficient data in recent determinations. (See p. 8.)

Depending upon the outcome of litigation involving Kuwait, Interior may, for the first time, enforce sanctions against citizens of a nonreciprocal nation. There is a more general concern about the practicality of identifying all stockholders from a nonreciprocal country, particularly those that own or control small interests in companies with federal mineral leases. (See pp. 10 and 11.)

GAO notes that industry representatives were generally "not dissatisfied" with the manner in which Interior has been implementing the provision over the past 64 years. (See pp. 12 and 13.)

AGENCY COMMENTS

In commenting on our report, Interior and State provided suggestions to improve the clarity and technical accuracy which have been incorporated in the report where appropriate. (See apps. IV and V.)

Contents

ABBREVIATIONS

BLM	Bureau of Land Management
GAO	General Accounting Office
MLA	Mineral Leasing Act of 1920

CHAPTER 1

INTRODUCTION

The United States has entered international forums, such as the Organization for Economic Cooperation and Development, to encourage the competitive flow of international trade and investment. Moreover, the United States has adopted a network of laws and international treaties in an attempt to facilitate U.S. investments abroad and induce changes in those countries believed to have restrictive investment policies.

One of these laws is the Mineral Leasing Act of 1920 (MLA) (30 U.S.C. 181 et. seq.), which either directly or by incorporation into other leasing laws generally authorizes the leasing of development rights for coal, phosphate, sodium, potassium, oil, oil shale, gilsonite, gas, and (in certain situations) sulfur found on federal onshore lands to U.S. citizens and corporations. Foreign investors may participate in such leases through stock ownership, holding, or control in U.S. corporations. However, section 1 of the MLA conditions the opportunity for foreign citizens to own interests in leases in the following manner:

> Citizens of another country, the laws, customs, or regulations of which deny like or similar privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

Other minerals and offshore deposits are not covered by reciprocal requirements of the MLA.

MLA confers authority upon the Secretary of Interior to adopt policies and procedures to implement the above reciprocity provision. In carrying out this responsibility, the Secretary is to determine the reciprocal status of other countries, identify lease applications by companies with stockholders from those countries, and prohibit the issuance of leases to applicants with stockholders from nonreciprocal countries. However, in the 64-year existence of the MLA, Interior has only once formally declared a country to be nonreciprocal and sought to apply sanctions. That was Kuwait in 1983.

In addition to the MLA, other U.S. laws, such as the Trade Act of 1974, the Caribbean Basin Economic Recovery Act, and the Deep Seabed Hard Minerals Resources Act, contain provisions designed to reduce overseas investment barriers. The United States has also entered into treaties, such as the General Agreement on Tariffs and Trade; Treaties of Friendship, Commerce, and Navigation; and Bilateral Investment Treaties. One of the underlying general objectives of such treaties is to achieve equity and openness in trade and investment relations. Appendix I provides more details on these laws and treaties.

Limitations, restrictions, and special requirements concerning foreign investments have caused the U.S. public and private sectors to question the extent to which other nations offer reciprocal treatment. This question exists despite the fact that the latest available figures show that at the end of 1982 overall U.S. investments abroad totaled $225 billion and foreign investments in the United States totaled $102 billion. In recent years a number of bills have been introduced in Congress to achieve reciprocity in the form of equal market access for U.S. exports of goods, services, and investment.

President Reagan's September 9, 1983, policy statement on international investment indicated that:

--The United States places high priority on protecting U.S. foreign investments from treatment that is discriminatory or inconsistent with international law.

--Present circumstances prevent international direct investment from fully contributing to global economic growth. Not enough collective restraint has been exerted against widespread and distortive intervention by governments that attempt to control the flow and benefits of foreign direct investment.

--Progress in addressing the foreign investment problem has been slow. Inability to reach an international consensus has created pressure in many countries, including the United States, to abandon more traditional market-based economic policies and to move toward still greater government intervention.

--The United States opposes the use of government practices, such as local content, minimum export, local equity, fiscal, or financial requirements, that distort, restrict, or place unreasonable burdens on direct investments.

The policy statement also reflects the President's belief that a combination of multilateral and bilateral efforts would contribute to a more open global investment climate.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairman, Subcommittee on Oversight and Investigation, House Committee on Interior and Insular Affairs, requested that we review the implementation of the reciprocity provision of the

MLA. In meeting this request we (1) reviewed Interior's procedures and administrative guidelines for determining the reciprocal status of other countries, (2) assessed the extent of interagency coordination in reciprocity cases between Interior and other U.S. agencies, (3) ascertained the kinds of investment restrictions U.S. firms encounter in selected countries, and (4) obtained the views of U.S. firms regarding the adequacy and usefulness of the reciprocity provision of the MLA.

We made this review in accordance with generally accepted government auditing standards. We obtained information for this report from officials of the Departments of the Interior, State, Commerce, Treasury, and Energy and from the Overseas Private Investment Corporation and Congressional Research Service. To obtain the private sector perspective, we interviewed officials of nine U.S. natural resource firms which currently operate or have operated in foreign countries and representatives of four natural resource trade associations.

To determine the types of conditions or restrictions other countries impose on U.S. investors, we selected 14 countries[1] (4 of which were recently subjects of Interior's reciprocity reviews and 10 others) and gathered information about their laws, regulations, and customs affecting foreign mineral investment. Information was obtained from country files maintained by Interior and State, available literature, including an investment policy report prepared by Price Waterhouse and Company, and responses to cables sent to U.S. embassies in 10 countries.

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[1]Bahrain, Canada, Cyprus, Indonesia, Korea, Kuwait, Malaysia, Mexico, Qatar, Saudi Arabia, Spain, Sweden, Turkey, and Venezuela.

CHAPTER 2

USE OF RECIPROCITY PROVISION IN CURRENT MINERAL INVESTMENT CLIMATE

A number of countries impose conditions on foreign mineral investment that are limiting or restrictive. However, past determinations by the Department of the Interior have generally concluded that such conditions are not unduly restrictive and do not violate the reciprocity provision of the Mineral Leasing Act of 1920.

U.S. officials and mining industry representatives agreed that considerable care should be taken before using this provision, because its use could (1) trigger retaliatory measures, (2) reduce the amount of financial resources available to finance U.S. mineral projects, and (3) interfere with broader U.S. foreign policy objectives. Moreover, some practical limitations on its use exist.

CONDITIONS IMPOSED ON FOREIGN INVESTMENT

As countries and investors obtain better geological, production, and marketing information, the negotiations and agreements between countries and investors become more sophisticated and comprehensive. Countries today are much more concerned about foreign investment enhancing their economies and standards of living. In addition, the growth in nationalism worldwide has led many countries to declare all resources as national property and to restrict direct ownership of their minerals. Historically, foreign investors wanted to own equity in foreign minerals and mining operations; today, many investors are satisfied to extract minerals under contract arrangements.

As a result of these changes, countries have increased the limitations and restrictive conditions imposed on foreign mineral investors; specifically:

--A number of countries, including Canada, Japan, and Korea, require that government agencies must review all large proposed foreign investments to determine whether they are in the best interest of the country.

--In other countries the percent of equity that foreign investors may hold in corporations or undertakings is limited. For example, Mexico, Venezuela, and Spain restrict foreign investments to 49, 40, and 49 percent respectively.

--Common practice in a number of countries is the required hiring of local citizens as employees and the use of local suppliers in the projects to stimulate the local economies. For example, in Saudi Arabia, Bahrain, and Kuwait the hiring of Arab nationals is the customary practice expected of foreign investors.

--Some developing countries require through conditional agreements that foreign investors provide local community schools, hospitals, or additional housing for employees.

Appendix II details conditions imposed by the 14 countries for which we obtained information.

RECIPROCITY DETERMINATIONS

Regardless of why conditions are imposed, the Department of the Interior's major concern is whether the conditions unduly restrict U.S. mineral investments. Most restrictive conditions, while not similarily imposed on foreign investors by the U.S. government, are generally not considered to be onerous, unreasonable, or burdensome, based on previous Interior determinations. For example:

--In 1928, the Netherlands was determined to be reciprocal because U.S. investors, while not allowed oil concessions in all Dutch territory, were allowed such concessions in the Dutch East Indies.

--In 1936, the British requirement that mineral development licenses could be obtained only if at least one director and a majority of employees of the company were British subjects was not considered unduly restrictive or harsh.

--In 1936, Interior ruled that since Great Britain and the Netherlands had no known deposits of a particular mineral they could not discriminate against the United States and therefore were reciprocal for that mineral. The ruling indicated that the reciprocity provision could be administered on a mineral specific basis.

--In 1974, Interior decided that Great Britain's nationalization of coal deposits would not affect the reciprocal status of the country because U.S. citizens were being treated the same as British subjects.

--A 1981 ruling indicated the MLA did not require the harsh measure of declaring a country nonreciprocal for imposing any requirement that was not like or similar to U.S. law. Instead, the

United States could respond in kind by imposing a similar restriction on foreigners seeking U.S. leases and thereby avoid classifying the nation as nonreciprocal.

Appendix III gives a more detailed discussion of some past determinations.

Such past determinations reflect the conditions that host countries could impose on U.S. investors without being considered nonreciprocal. Such conditions include (1) limiting foreign investment to specific territories, (2) nationalizing some or all minerals as long as no private investors (domestic or foreign) are permitted to develop these minerals, and (3) restricting foreign ownership to specific percentages if a similar restriction is also applied to citizens from the host country investing in the United States.

In March 1983, however, the Department of Interior ruled that Kuwait was a nonreciprocal nation because it denied participation by American oil companies in Kuwait's oil development. According to Interior, Kuwait's nationalization effort systematically eliminated all of Kuwait's petroleum concessions held by U.S. citizens and corporations, but not concessions that were held in part by Japanese, British, Dutch, and Spanish-owned companies. Currently, only a subsidiary of the Japan Trading Company holds an interest in a petroleum offshore concession from Kuwait.

Interior documents indicated that (1) Kuwait had no overt plan to nationalize only U.S. interests, but such a plan is not required for Interior to find a country nonreciprocal, and (2) Kuwait, while perhaps intending to nationalize all foreign petroleum concessions, did discriminate in its nationalization effort. Therefore, Interior concluded that citizens of Kuwait generally may not, through stock ownership, stock holding, or stock control, own interests in petroleum leases or permits under the provisions of the MLA. This prohibition included oil and gas leases, combined hydrocarbon leases, gilsonite leases, and oil or gas pipeline right-of-way permits. The Secretary of Interior's decision is currently being appealed in U.S. District Court (_Sante Fe International Corporation v. Clark_, Civil Case No. 83-347 [D. Del.]).

Concerning the firm with the remaining Japanese-owned interest in a Kuwaiti petroleum concession arrangement, the State Department commented that it is "a joint concessionaire of both Kuwait and Saudi Arabia (a factor that may explain more why its concession has not been nationalized than any question of discrimination against American investment) in off-shore areas where ownership is jointly shared between Kuwait and Saudi Arabia."

CONSTRAINTS TO APPLICATION OF RECIPROCITY PROVISION

The reciprocity provision in the MLA may provide some useful negotiating leverage, but officials from the Department of State, Treasury, and Commerce as well as the Office of the U.S. Trade Representative have indicated that its use could have adverse effects. Such effects could include (1) interfering with the overall U.S. foreign policy objectives concerning the host country, (2) reducing the amount of foreign capital available to develop U.S. mineral projects, thereby affecting those projects and the associated U.S. jobs, and (3) causing other countries to react by adopting stronger retaliatory measures, which make conditions worse for U.S. investment abroad.

In addition, practical considerations may deter wide use of the mineral reciprocity provision. Reciprocal measures are only meaningful if investors from a particular country want to invest in U.S. projects; many developing countries probably have little, if any, financial resources to invest in U.S. mineral projects. Moreover, using the reciprocity provision may conflict with other U.S. government efforts, such as negotiating cooperative treaties or commercial agreements.

Interior officials agreed that the Department should be judicious in using the reciprocity provision of the MLA. Their belief was that Interior had over the years been prudent in its application of the mineral reciprocity provision. However, they stated that when a case warranted action, the Department should be willing to pursue the matter.

CHAPTER 3

ADMINISTRATION OF RECIPROCITY PROVISION

The Interior Department implements the mineral reciprocity provision of the MLA by reviewing the laws, regulations, and customs of any foreign countries where substantial questions are raised concerning the denial of like or similar privileges. Over the 64-year life of the MLA, apparently no more than a few dozen reciprocity reviews have been made, including 4 initiated since 1982. These reviews are generally conducted by Interior's Bureau of Land Management (BLM) at the request of corporations, foreign governments, or private citizens.

Neither the MLA nor implementing Interior Department regulations specify how reciprocity determinations are to be made. Because reciprocity reviews were infrequent and sporadic, the administrative procedures used in making reciprocity determinations were generally ad hoc.

In 1982, Interior revamped its administrative procedures concerning mineral reciprocity determinations. Reciprocity reviews initiated since that time have been completed within 4 to 7 months. Depending upon the outcome of litigation involving Kuwait, Interior may, for the first time, enforce sanctions against citizens of a nonreciprocal nation.

FACT-FINDING AND DETERMINATION PROCEDURES

The 1982 changes in Interior's procedures for implementing the MLA reciprocity provision include (1) establishing a more comprehensive policy for determining when reciprocity reviews are warranted, (2) using the public comment process to obtain more information in its fact-finding efforts, (3) setting forth criteria on which to base reciprocity determinations, and (4) eliminating the list of reciprocal countries by listing only countries reviewed and found nonreciprocal.

In the past, Interior relied extensively on the State Department and its embassies to help compile, translate, and analyze the laws, customs, and regulations of the nations being reviewed. However, according to Interior, this is no longer the case, especially in the interpretive aspects. For example, during the recently completed reviews of Sweden and Cyprus, Interior indicated it received no legal or analytical assistance from State, but State did supply useful informational cables from U.S. embassies.

Interior may request public comments through the Federal Register. Although public comments are not required, recently completed reciprocal reviews involving Canada, Cyprus, Kuwait, and Sweden, as well as an ongoing review involving Finland, have included requests for public comments. For Canada, comments were received from 34 different concerned parties.

Interior commented it conferred informally with officials of the Treasury, Commerce, Energy, and State Departments as well as the Office of the U.S. Trade Representative during recent reciprocity reviews, and they were supplied with copies of Interior's Federal Register notices relative to the countries involved. None of the officials with the Overseas Private Investment Corporation; the Departments of Commerce, Energy, and Treasury; and Interior's own Bureau of Mines, that we interviewed provided any example or indication that BLM did not have data critical to reciprocity determinations.

Once the fact-finding process is completed, the Department of the Interior is responsible for determining a nation's reciprocal status. However, neither the MLA nor Interior regulations set forth criteria for determining reciprocal status. According to Interior officials, no consistent basis was used for determining the status of countries until Interior revised its procedures.

In 1982, Interior developed a multiple-part test to help identify nations denying "similar or like privileges." This test, for the most part, consists of three questions.

--Are U.S. citizens or corporations precluded by law, customs, or regulations from investing in the corporations of the nation under the study?

--Are domestic corporations excluded from acquiring beneficial interests in the host nation's mineral resources because they have U.S. stockholders?

--Does this nation permit U.S. holdings (e.g., concessions) of its minerals, even though not through stock participation?

According to Interior, this test can be made on a mineral-by-mineral basis or across the board, and if it is found that a nation unduly limits investments of U.S. citizens or corporations in the development of its minerals, the country will be designated as nonreciprocal.

No specific timeframe has been established for completing reciprocity reviews. The reviews for Cyprus and Sweden took about 4 months and for Canada about 7 months. The Kuwait review took over 30 months, but Interior officials pointed out that the Kuwait review was initiated prior to the development of the new procedures. They believe that reciprocity reviews were generally being completed in a timely manner.

PROCEDURES FOR LISTING
STATUS OF NATIONS

Prior to 1982, a nation that had been examined and found to be reciprocal was added to the list of reciprocal nations. Interior used this list in determining whether lease applicants were qualified to hold federal leases. Under the MLA reciprocal provision, Interior officials were not to grant leases to corporations whose stock was held by citizens or corporations from nations not on the list.

According to Interior officials, the status of countries not on the list was unclear. Foreign investors were confused about their status, particularly when their country had not been reviewed. In 1982, Interior discarded the list of reciprocal nations.It now maintains a list of only those nations which have been reviewed and are considered to be nonreciprocal.

Previously Interior had no specific regulations or procedures concerning when initial reviews of the reciprocity status of nations would be undertaken or when and at whose request the status of nations already determined would be reexamined. The MLA has no requirement for periodic reviews or updates of information and Interior did not routinely monitor changes in foreign mineral investment laws. Under the revamped 1982 procedures, Interior now examines information in requests, petitions, protests, or allegations it receives concerning a nation's reciprocal status to determine whether a sufficient basis exists to warrant a more detailed review.

DIFFICULTY IN IDENTIFYING
STOCKS HELD BY CITIZENS OF
NONRECIPROCAL COUNTRIES

Interior officials said that the identification of all stock owned, held, or controlled by a citizen or firm of a nonreciprocal country in U.S. corporations that have mineral leases under the MLA would be difficult. Interior maintains information on leaseholders of mineral rights on federal lands, but most of the data being collected does not distinguish between foreign and U.S. owners of interests in onshore federal mineral leases. Moreover, stocks are bought and sold daily, some through holding companies and brokerage accounts. Thus determining the ultimate beneficiaries of all stock associated with existing leases under the MLA is considered a tremendous administrative burden.

Interior currently requires coal and other solid mineral lease applicants to submit documents identifying foreign investors. However, in streamlining the oil and gas lease application process, Interior eliminated a similar requirement in 1982. For oil and gas lease applications, which make up over 95 percent of all applications, applicants must certify that citizens from nonreciprocal countries do not own more than 10 percent of the stock. Applications from companies that have more than 10 percent of their stock owned by citizens of a nonreciprocal country are not processed. Interior officials indicated there was no clear guidance for handling cases where stock ownership was less than 10 percent.

PROCEDURES FOR IMPLEMENTING SANCTIONS

According to Interior, when interests in mineral leases are owned in violation of the reciprocity provision, the U.S. government can cause (1) the sale of the stock by the foreign entity or sale of the lease by the U.S. corporation, (2) forfeiture of the offending interest, that is, the stock owned by the foreign entity, and (3) cancellation of the U.S. corporation's lease. See 30 U.S.C. 184(h) (1982).

Interior documents from 1980 and 1981 indicate that Interior officials had felt it was not appropriate to include India and Malaysia on the list of reciprocal countries. However, they were not formally declared nonreciprocal. In commenting on our draft report, Interior offered the following explanation.

> "In July 1976, the Interior Department received a description of the laws, customs and regulations of India from the State Department. Apparently, Interior considered that the information provided by the State Department was insufficient to justify placing India on the list of reciprocal countries. Since the Interior Department's policy then was not to issue mineral leases to a corporation [unless its foreign stockholders were from a country on the] reciprocity list, there was no basis or reason for the Interior Department to apply further sanctions . . . In January 1977, the State Department advised Interior that Malaysia did not qualify under the reciprocity provision. However, the State Department apparently had not apropriately interpreted the reciprocity provision and Interior asked for a reexamination of the matter. In July 1981, State provided the clarification requested and Malaysia continued on the list of reciprocal countries until elimnation of the list in May 1982."

Interior also commented that its records show that the United Kingdom was considered nonreciprocal until 1936, although the Department is unaware of any formal determination.

Interior, in revamping its administrative procedures in 1982, did not develop a specific policy for enforcing sanctions. The March 1983 finding of nonreciprocity for Kuwait has raised several questions that Interior is trying to resolve, such as:

--Should sanctions be applied to leases acquired by U.S. corporations with stockholders from a nonreciprocal country prior to or during Interior's review process? How can they be identified?

--If existing leases are involved, should actions be taken against all corporations which may have shareholders who are from a nonreciprocal country even if their majority shareholders are from the United States or other reciprocal nations?

Interior commented that it has not considered and is not considering the question of whether the U.S. government should reimburse citizens from a nonreciprocal country for their vested interest in leases which they are forced to give up but for which they can find no qualified party to assign their interest. Interior explained that, in its view, it is not required under the law to reimburse a company or an individual that is in violation of the statute.

INDUSTRY VIEWS

Most industry representatives we talked with indicated that their firms or associations had no official position on the overall reciprocity issue or on Interior's general administration of the mineral reciprocity provision. However, these representatives did provide their informal views, as follows.

--Generally they were "not dissatisfied" with the manner in which Interior has been implementing the reciprocity provision for the last 64 years.

--Some questioned the continuing need for the mineral reciprocity provision, pointing out possible adverse effects and the existence of other potential remedies; i.e., treaties and other statutes concerning trade and investment. Others favored the retention of the reciprocity provision as a "club in the closet," "tool of quiet diplomacy," or leverage in negotiation, but expressed fears of foreign retaliation if strict reciprocity criteria were invoked. Some felt the concept of reciprocity should be considered in a broader context because the reciprocal/nonreciprocal decision may have impacts beyond those associated with minerals.

- --Most felt that a more pragmatic test was whether the host country singled out the United States for discrimination among those nations wishing to develop mineral interests in the host country.

- --Some said that it would be difficult for Interior to establish and administer foreign investment regulations which would "mirror" the various conditions U.S. investors may face in each of the countries around the world. These individuals also pointed out that Interior did not have the authority to "mirror" all foreign investment stipulations, such as varying tax structures.

- --A number of them indicated that finding all owners that may be from a nonreciprocal country would be a difficult if not impossible administrative burden. They pointed out that lists of shareholders are generally not current and, with holding companies and brokerage accounts, they questioned how Interior could truly determine stock ownership.

- --None of them favored greater use of the mineral reciprocity provision at the present time.

Generally, U.S. corporations and trade associations with interests in natural resources have reluctantly accepted foreign investment conditions as a part of the contemporary business environment. They see the new investment conditions as a consequence of the increased knowledge of the mineral market and the economic nationalism prevalent in much of the world today. Several corporate officials said that requirements imposed by host countries to hire local citizens as employees or to have local citizens on the board of directors are generally not unduly burdensome. Another official stated that requirements to train local employees, transfer technology, use local goods and services, and provide infrastructure directly related to the project were reasonable.

AGENCY COMMENTS

In commenting on the draft of this report, the Departments of the Interior and State provided suggestions to improve the clarity and technical accuracy of the report. We have incorporated these suggestions in the report where appropriate. We have also included the comments we received in appendixes IV and V.

ASSOCIATED PROVISIONS IN OTHER TRADE AND INVESTMENT LAWS AND TREATIES

The MLA is one of a number of U.S. efforts designed to promote the competitive flow of U.S. investments abroad and induce changes in those countries believed to have restrictive trade and investment policies. Laws have been enacted with provisions to reduce the barriers for overseas trade and investment. In addition, the United States has entered into treaties with provisions to achieve equity and openness in trade and investment relations. Some of these laws and treaties are briefly described below.

SECTION 301 OF THE TRADE ACT OF 1974

Section 301 of the Trade Act of 1974 can be used to take action against foreign trade and investment practices which are unreasonable, unjustifiable, discriminatory, and which burden U.S. commerce. The President may take all appropriate and feasible action within his power to enforce U.S. treaty rights or to obtain elimination of policies or practices which deny benefits to U.S. citizens and corporations.

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

This law, enacted in 1983, provides new trade and tax measures to promote economic revitalization and expanded private sector opportunities in the Caribbean region. It allows the President to eliminate duties until 1995 on products from those Caribbean countries that he designates beneficiary countries. The act sets forth the criteria for countries to be designated as beneficiary countries. The President may not designate a country if it provides preferential treatment to the products of another developed country which adversely affects trade with the United States. Finally, the President is required to consider the extent to which the country is prepared to provide more equitable and reasonable access to its markets and basic commodity resources, except petroleum and petroleum products.

DEEP SEABED HARD MINERALS RESOURCES ACT

According to this act, the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, can revoke the designation of a foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation no longer recognizes current commercial recovery, licensing, conservation, and safety provisions for future access to nickel, copper, cobalt, and manganese resources of the deep seabed.

GENERAL AGREEMENT ON TARIFFS AND TRADE

The General Agreement on Tariffs and Trade (GATT) is a multilateral agreement, subscribed to by 85 countries, that delineates rules for international trade. According to the State Department, the fundamental objectives of the GATT are the reduction of trade barriers and the application of existing barriers on a most-favored-nation basis. GATT has general rules for the trade of goods and cooperative planning and proposed rules for safeguards of domestic industries threatened by imports.

Although there is no specific GATT agreement applicable to investments, the GATT forum has been used to discuss discriminatory investment policies of certain countries.

TREATIES OF FRIENDSHIP, COMMERCE, AND NAVIGATION

Treaties of Friendship, Commerce, and Navigation are intended to establish the rights of individuals and firms from one country within the jurisdiction of another and to create a framework for mutually beneficial economic relations between countries. The United States has such treaties with more than 40 countries. The State Department commented that these treaties contain basic most-favored-nation and national treatment provisions, but some treat mining on a reciprocal basis.

BILATERAL INVESTMENT TREATIES

The United States has negotiated Bilateral Investment Treaties with Egypt, Panama, Haiti, Senegal, and Morocco; none has yet been submitted to the Senate for approval. These treaties are different from Treaties of Friendship, Commerce, and Navigation because they focus exclusively on investment relations. Bilateral Investment Treaties are based on reciprocal treatment considerations and have four principal provisions.

1. Grant national treatment and most-favored-nation treatment to foreign investors.

2. Confirm international legal principles relating to expropriation and provide for prompt, adequate, and effective compensation in the event of expropriation.

3. Assure free transferability of capital and profit.

4. Specify consultative and dispute settlement mechanisms.

Negotiations of Bilateral Investment Treaties are now ongoing with a number of other countries. According to the State Department, the Bilateral Investment Treaties can provide (1) a framework for investment relations, particularly in those countires with which the United States does not have Friendship, Commerce, and Navigation Treaties, and (2) a greater degree of clarity and mutual commitment in the areas of central concern to foreign investors.

DESCRIPTION OF FOREIGN INVESTMENT CONDITIONS IN SELECTED COUNTRIES

This appendix has been included to show the kinds of conditions that U.S. investors may face in certain nations.

BAHRAIN

The only mineral produced in Bahrain is petroleum. Bahrain's constitution states that all natural resources are the property of the state and that no concession for the exploitation of a natural resource may be granted except by law and for a limited time period.

Within this framework, foreign investors, including U.S. firms, have been active in the exploration and development of Bahrain's resources. However, Bahrain's laws limit foreign ownership of any company to 49 percent.

There is a general embargo on any company having dealings with Israel. There is no particular restriction on employing foreign nationals, although in practice the hiring of Arab nationals is preferred.

CANADA

Two Canadian statutes affect foreign participation in mineral developments.

--The Foreign Investment Review Act of 1973 requires government approval before foreigners acquire an existing Canadian business or establish a new one in which (a) 75 percent or more of the stock in the company is owned by foreigners, and/or (b) 5 percent of the stock is owned by a single foreigner. Under this act the government can reject an acquisition if it is not of significant benefit to Canada, based on the following criteria.

a. Increase in the level of economic activity, including (but not limited to) employment.

b. Degree of Canadian participation in the organization.

c. Effect on productivity, industrial efficiency, technology development, and product innovation.

d. Effect on competition.

e. Compatability of the acquisition with national industrial policy and economic policy.

--The Canada Oil and Gas Production and Conservation Act affects Canadian lands of the outer continental shelf, Yukon, and Northwest Territories. The Act does not affect Provincial lands. Under this act, foreigners and Canadians are treated alike for exploration rights. However, production licenses are only granted or renewed

a. for individuals who have been residents of Canada for at least one year,

b. for corporations that are not less than 50 percent Canadian owned, and

c. for two or more corporations applying for the license if the combined Canadian ownership is not less than 50 percent.

For each license there is a mandatory 25 percent "crown share" and a 10 percent "royalty" paid on oil and gas produced, plus a "progressional incremental royalty" payment up to 40 percent of the net profit from production. This act also has a provision to make use of Canadian suppliers if their prices are competitive.

CYPRUS

Cyprus has three principal mineral development laws.

1. The Mines and Quarries Law for Minerals sets up a system for prospecting permits and mineral leases that does not treat foreigners differently than Cypriots.

2. The Continental Shelf Law authorizes the government to regulate mineral development on the shelf. No restrictions are mentioned on the ownership of development rights.

3. The Petroleum (Production) Law authorizes the government issuance of prospecting permits and mining leases. It does not restrict who may apply for permits and leases, and government practices also do not limit alien rights.

The U.S. Embassy in Cyprus reports that the laws, customs, and regulations of Cyprus do not preclude or limit U.S. investments on the island, but the Embassy is aware of neither current U.S. investment in minerals in Cyprus nor any efforts by U.S. investors to make such investments.

INDONESIA

Under the basic statutes governing mineral development in Indonesia (i.e. the Oil and Gas Law of 1960 and the Mining Act of 1967), all mineral rights belong to the state. Since 1967, the government of Indonesia has sought to attract investment in mineral extraction in order to support the nation's economic development. All foreign investment in minerals has been undertaken under contracts of work. The provisions of such contracts have been tightened in stages since 1967 and cover, among other things, tax and royalty obligations, reporting requirements, Indonesian employment, Indonesian equity, procurement of supplies from domestic sources, maximizing of local value added, and environmental concerns.

According to the U.S. Embassy in Indonesia, (1) Indonesian regulations governing investment in mining are applied equally to all foreign investors, (2) potential U.S. investors in minerals have not advised the Embassy of any difficulty in Indonesia due to their nationality and (3) there is no discernable Indonesian interest in mineral investment in the United States.

KOREA

The Korean law concerning the mining and extraction of minerals on a lease basis is the Mining Business Act of 1981. Under the law, ownership of mining rights cannot be granted to foreigners or firms in which over 50 percent of the capital or voting rights are controlled by foreign nationals. Entities established under Korean laws may lease mineral concessions.

At present, all foreign investment in Korea is subject to approval of the government. The Korean Minister of Economic Planning Board is empowered to approve a foreign equity share up to 100 percent in all industries on the merit of individual investment projects.

KUWAIT

On March 10, 1983, the Secretary of the Interior ruled that Kuwait discriminated against American oil companies by denying them participation in Kuwait oil development. Kuwait is appealing this decision.

Several Kuwaiti laws affect foreign mineral investments.

1. Article 2 of the 1962 Constitution of the State declares that all natural resources and the income derived from them are the property of the state. Article 152 authorizes the government to grant concessions to exploit resources "by law and for a limited period."

2. Law No. 19 of 1973 concerning the conservation of petroleum resources authorizes the government to issue regulations governing exploration and development of resources.

3. Decree law No. 6 of 1980 established the Kuwait Petroleum Corporation, and ownership of outstanding concessions for developing hydrocarbons was transferred to it. The Corporation is allowed to participate with foreign firms or become a joint partner in mineral development.

4. Law No. 15 concerning commercial companies allows aliens to participate in commerce through companies that are at least 51 percent Kuwaiti-owned.

Under Kuwaiti law (1) a concession to explore for and develop mineral resources may be issued to entities with foreign participation, (2) foreigners may own up to 49 percent of the stock in a Kuwaiti corporation, and (3) foreigners can be required to conduct business in Kuwait through Kuwaiti agents in some instances. During the 1970s, however, Kuwait nationalized most petroleum development in that country and by the end of 1977 no U.S. petroleum company held a concession in Kuwait. All American interests had been nationalized, but there were other foreigners that owned interests in companies holding petroleum concessions in Kuwait. A subsidiary of the Japan Trading Company currently holds an interest in a petroleum offshore concession from Kuwait in the Divided Zone, which is under the joint administration of Kuwait and Saudi Arabia.

There is a general embargo on companies which have dealings with Israel. Moreover, in practice, the hiring of area nationals is preferred.

MALAYSIA

No laws or regulations specifically deny U.S. citizens or corporations the procurement of extraction rights for minerals. The Petroleum Development Act of 1974 formed a national oil company, Petronas, and vested the company with all ownership rights and control. Companies seeking rights for the purpose of extraction of Malysian crude oil or natural gas must contract with Petronas in a production-sharing agreement.

According to a 1981 Price Waterhouse study, entitled "Investment Policies In Seventy-Three Countries," foreign ownership in the Malysian corporate sector is restricted by the following guidelines.

--Industrial projects which are dependent to a large extent on the domestic market are expected to have at least 51 percent Malaysian participation.

--Projects using important nonrenewable resources, particularly at extractive and primary processing levels, are expected to have at least 70 percent Malaysian participation.

--Foreign acquisition of assets exceeding $1 million in value or the equivalent of 15 percent or more of voting power must be approved by the government's Foreign Investment Committee.

MEXICO

The "Mexicanization" of the mining sector has been a gradual process over many years. However, it was not until 1961 that a law, which required that 51 percent of a mining firm's equity be Mexican-owned, was enacted. For operations on government lands, the Mexican ownership required is 66 percent. In the 1950s, over 90 percent of the hard rock mineral industry was foreign-owned. Although the 1961 law gave firms until 1986 to "Mexicanize," 98 percent of the industry had passed to Mexican control by 1979.

All foreign investment in Mexico must receive government authorization. Moreover, according to the U.S. embassy in Mexico, companies with foreign participation are excluded from ventures involving sulphur, potassium, phosphates, iron, or coal. Oil and gas production and uranium mining and processing are reserved for government-owned entities.

The U.S. embassy indicated that (1) Mexican restrictions on foreign investment in mining are applied in a nondiscriminatory manner, irrespective of the country from which the investment originates, (2) Mexico shows no signs of easing the current restrictions on foreign equity participation in mining (both exploration and production), and (3) U.S. embassy officials are aware of no recent case in which a minority American partner in a Mexican mining venture has claimed unfair treatment on the basis of nationality.

QATAR

Qatar's Basic Law of 1970 and subsequent laws and decrees do not address the issue of natural resources. According to the State Department, the Qatar government has exercised rights of ownership over oil and gas reserves and would probably claim other commercially exploitable resources if they were discovered. Concessions are awarded to private companies, although increasingly these are required to be joint ventures in which the Qatari government itself is the majority shareholder.

According to the 1981 Price Waterhouse study on investment policies, (1) all companies must be at least 51 percent owned or sponsored by Qatari nationals, (2) inward investment may be restricted to areas requiring foreign technology or very large capital contributions where local resources are inadequate, (3) there is no particular restriction on the foreign nationals being employed, although in practice Arab nations are given preference, and (4) there is a general embargo on any company which has dealings with Israel.

SAUDI ARABIA

Saudia Arabia's mining code says that all mineral deposits are the state's exclusive property. Private companies may request permit concessions for prospecting and production from the Ministry of Petroleum and Mineral Resources. However, the U.S. embassy reported that the Saudi government's purchase of the producing assets of ARAMCO, the large oil company, would seem to foreclose future non-Saudi or nongovernmental ownership of petroleum concessions in Saudi Arabia. Although ARAMCO is now effectively a Saudi entity, all of its exploration activities are still carried out in cooperation with the former partners.

The Saudi government is interested in attracting investors to develop the Saudi mineral sector and provides incentives to companies willing to invest in mineral exploration activities. The principal U.S. investor in Saudi mineral development has entered into a joint venture with a Saudi company to conduct mining exploration activities. The U.S. embassy indicated that it was unaware of any particular investment problems being encountered by U.S. mining companies in Saudi Arabia and that these companies have frequent contact with the U.S. Geological Survey Mission based in Saudi Arabia.

Under the Saudi Regulations on Investment of Foreign Capital, foreign investments must be approved by the government on the basis of the benefits to the country. Any firm or any of its affiliates contributing to Israel's economic or defense capabilities may be boycotted, subject to a determination by the Saudi government. According to the 1969 Ministry of Labor regulation, the number of Saudi employees in a company must not fall below 75 percent or their remuneration below 51 percent of the total; however, the State Department indicated that the Ministry usually approves exceptions to this regulation upon request if sufficient Saudi labor is not available.

SPAIN

Spanish legislation governing participation of foreign citizens in minerals is contained in several statutes and regulations (i.e., mineral extraction is governed by Law 22 of June 21, 1973; hydrocarbon exploration and production by Law 21 of June 27, 1974, and Decree 2362 of July 30, 1976; and petroleum refining by Decree 418 of March 9, 1968). In sum, prior approval from the Spanish government is required by foreign investment if participation exceeds the following figures.

--Mineral extraction - 49 percent
--Hydrocarbon exploration and production - 50 percent
--Petroleum refining - 40 percent

The Spanish government has allowed a number of cases where foreign participation exceeded those figures, including some with 100-percent U.S. participation. Many U.S. firms have invested in mineral enterprises in Spain.

The U.S. embassy in Spain reported that it knew of no U.S. investor that had been denied Spanish authorization to invest and knew of no Spanish effort to reduce the percent of foreigner ownership of investment either during its establishment or once the enterprise had begun operating.

Foreigners investing over 25 million pesetas (about $160,000) are normally required to make commitments regarding exports and employment. Firms with authorized foreign participation generally enjoy the same rights as other Spanish entities.

SWEDEN

The Mineral Law of 1974 governs energy-bearing minerals, oil, gas, coal, alum shale, uranium, thorium, peat for energy production, and certain forms of clay or salts. All persons wishing to mine these minerals must obtain a special permit, or concession, from the government. Separate permits are required for exploration and exportation. Stipulations may entitle the state to participate in the undertaking or proceeds of the concession.

Effective January 1, 1983, Sweden enacted new legislation which deals with foreign investments in mineral resources in Sweden. The Law on Foreign Acquisition of Swedish Firms now regulates the purchase by foreigners of more than 10 percent of existing Swedish firms. Purchases of more than 10 percent of a firm must be approved by the government, with the presumption they will be granted unless they conflict with any essential general interests.

According to the U.S. embassy, Sweden had been very cautious about allowing foreign involvement in its indigenous mineral resources, but the 1983 legislation allows the Swedish government to exercise slightly more flexibility with regard to foreign participation in at least exploring for minerals in Sweden. The Embassy reports that for the first time in 70 years a foreign firm (from the United Kingdom) was recently allowed to enter the Swedish mining sector.

TURKEY

Except for certain minerals (i.e., boron, uranium) which are reserved for the government, foreigners may invest in mineral extraction in Turkey. The Mining Law does not discriminate between foreign and domestic investors. The Foreign Capital Law, which applies to all foreign investment except petroleum, was liberalized considerably in 1980 in an effort to encourage foreign investment. However, the government does give preference to the state-owned mineral producer, Etibank, and is encouraging Etibank to seek foreign partners for a series of large projects. The Petroleum Law was modified in 1982 to encourage foreign investment and exploration.

VENEZUELA

By law, exploitation of hydrocarbons, coal mining, and mining of metallic minerals is generally reserved to the state. The government is permitted by law to contract with foreign entities for technical services in the mining and petroleum sectors. No foreign equity participation is allowed. Non-metallic mining concessions are occasionally granted to private entities, but foreign participation may not exceed 49 percent. In practice, foreign participation is seldom authorized. Foreign participation which is allowed is usually limited to technology transfer in exchange for a specified amount of material and/or cash. The State Department indicated that in 1976 Venezuela nationalized considerable U.S. and other foreign investments in the petroleum sector.

The U.S. embassy indicated that to its knowledge there is no U.S. investment in the Venezuelan mining sector, and it was not aware of any efforts by U.S. investors to make such investments.

DEPARTMENT OF THE INTERIOR'S INTERPRETATIONS OF THE MLA RECIPROCITY PROVISION

During the first six decades since the MLA was enacted, the Interior Department has interpreted the reciprocity language through decisions on the reciprocal status of particular nations. As foreign nations introduce new investment restrictions, limitations, or conditions, Interior may apply past precedents or develop new criteria to judge the effect of the change on a particular country's reciprocity status. A few decisions and statements of criteria stand as landmark reciprocity interpretations. The following summaries of major reciprocity interpretations are based on a Congressional Research Service March 1983 report, entitled "Reciprocity Under the Mineral Lands Leasing Act of 1920" and Department of the Interior documents, including some original interpretation papers and letters.

1. In a 1920 determination of the Netherlands' reciprocity status, the Secretary of the Interior clarified what constitutes "like or similar" privileges under the reciprocity provision. The Secretary established an interpretation that to be considered reciprocal a nation must concurrently (1) allow U.S. citizens to form corporations or own stock in corporations of the country and (2) not debar the company from obtaining "concessions or privileges" for developing mineral resources because of such U.S. stock interests.

2. In 1928, the U.S. government announced the position that a country must allow U.S. access to mineral developments in some, but not necessarily all, of the country's territory. In the 1928 ruling, the Netherlands was determined to be reciprocal because U.S. investors were allowed oil concessions in the Dutch East Indies rather than in all Dutch territory.

3. The Attorney General advised Interior in 1936 that certain conditions imposed on foreign investment in Great Britain did not violate the reciprocity provision. The British allowed companies formed in England or Northern Ireland to apply for mineral development licenses. If the company was controlled by foreign interests, however, it could obtain licenses only if at least one director of the company and a majority of the employees hired for the development were British subjects. The Attorney General rendered an opinion that these requirements were not "unduly restrictive or harsh" and were similar to the requirements of some American states. Based on this interpretation of "like or similar" investment privileges, Great Britain was found to be a reciprocal nation.

4. The question of whether a reciprocal country must allow U.S. access to all minerals covered by the MLA or to only a few specific minerals was addressed in a 1936 opinion of the Commissioner of the General Land Office. That opinion was written when a firm owned by British and Dutch corporations applied for federal leases to mine potash.

   The Commissioner noted that Interior's past practice was to inquire about the laws, regulations, and customs of a country "only with respect to the particular mineral deposit" which was the subject of the foreign lease request. Since Great Britain and the Netherlands owned no known deposits of potash, the Commissioner reasoned that those countries could not possibly discriminate against the United States in reference to that mineral alone. The rationale became part of the Commissioner's opinion that Great Britain and the Netherlands were reciprocal and continues the interpretation that the MLA reciprocity provision can be administered on a mineral specific basis.

5. A 1974 letter written by Interior's Deputy Solicitor discusses the effect of another country's nationalizing a mineral resource on that country's reciprocity status. The case in question involved Great Britain's decision to nationalize coal deposits. Under British law, no private corporation, foreign or domestic, can own interests in British coal developments. The Deputy Solicitor stated that such nationalization would not affect Great Britain's reciprocal status. Drawing upon earlier interpretations that the MLA addresses the privilege of owning stock in companies controlling mineral leases, the Deputy Solicitor reasoned that Great Britain's action did not restrict a U.S. citizen's right to acquire stock in British corporations and that Britain did not restrict corporations from owning coal leases because they have foreign shareholders. The British nationalization ended the possibility of any nongovernment corporation, foreign or domestic, developing coal deposits. Thus, there is no violation of the stock ownership requirement of the reciprocity provision.

6. In 1981 the question of whether the United States could change its laws or regulations to "mirror" a foreign country's restrictive practice was addressed by an Assistant Attorney General. Mirroring is a practice under which the United States changes its lease policy

with respect to one country to duplicate that country's restrictive practice and thereby establish reciprocal relations. An example of mirroring would be to limit the total percent of equity that a foreign investor may hold in a U.S. company owning mineral leases if that investor's country limits equity holdings by U.S. investors.

A 1981 Assistant Attorney General opinion reasoned that proper construction of the MLA and interpretations of its legislative history allow mirroring to establish reciprocal relations. He stated that the MLA does not require that Interior take only the harsh, "draconian" measure of declaring a country nonreciprocal for imposing any requirement that is not like or similar to U.S. law. Instead, he ruled that the United States may respond in kind by imposing a similar restriction on foreigners seeking U.S. leases and thereby avoid classifying the nation as nonreciprocal.

The Assistant Attorney General also wrote that mirroring is allowable because the Congress wanted to avoid retaliation by other countries due to the serious finding of nonreciprocity and because the Secretary of the Interior is accorded broad discretion to act under the law. However, it was recognized that implementing such action could prove to be difficult because of the wide array of foreign investment laws imposed by various countries. For example, the Assistant Attorney General's memorandum noted that changes in a foreign country's tax laws that would discourage investment in mineral resources for corporations having a certain percentage of foreign stockholders would be difficult for Interior to mirror if only because Interior lacks authority to take the necessary "mirroring" action (e.g. changing U.S. tax laws in parallel fashion).

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C 20240

APR 19 1981

Mr. J. Dexter Peach
Director
Resources, Community and Economic
Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Enclosed is the Department of the Interior's comments on the draft General Accounting Office report, "The Mineral Lands Leasing Act Reciprocity Provision--Implementation and Constraints." We have divided our remarks into three segments: (1) we review the issue of India-Malaysia and suggest some clarifications; (2) we evaluate the issue of sanctions that requires substantial clarifications; and (3) we refer to several statements in the report that need minor modifications in order to be more accurate and consistent.

Overall we have found the report to be an objective and effective evaluation of a rather complex provision of the law. Please do not hesitate to contact us with regard to any of the issues discussed or questions that you may have.

Sincerely,

Assistant Secretary for
Land and Minerals Management

Enclosure

Department of the Interior comments on draft GAO report on "The Mineral Lands Leasing Act Reciprocity Provision--Implementation and Constraints"

(I) The statement on page 18 that "In 1981, Interior indicated that it was not appropriate to include India and Malaysia in its list of reciprocal countries, but sanctions were never applied against either country." is not quite correct. In July 1976, the Interior Department received a description of the laws, customs and regulations of India from the State Department. Apparently, Interior considered that the information provided by the State Department was insufficient to justify placing India on the list of reciprocal countries. Since the Interior Department's policy then was not to issue mineral leases to a corporation reciprocity list, there was no basis or reason for the Interior Department to apply further sanctions nor has GAO identified what additional sanctions would have been appropriate. With regard to Malaysia, in January 1977, the State Department advised Interior that Malaysia did not qualify under the reciprocity provision. However, the State Department apparently had not appropriately interpreted the reciprocity provision and Interior asked for a reexamination of the matter. In July 1981, State provided the clarification requested and Malaysia continued on the list of reciprocal countries until elimination of the list in May 1982.

We request that GAO correct this statement on page 18 of the report.

(II) Also on Page 18 of the report, Interior is stated to be trying to resolve three questions relative to sanctions. The first and second questions are stated incorrectly and the third one is not a current issue.

The first question suggests that foreign citizens and firms own U.S. leases. Foreign nationals can only own the stock in U.S. corporations that hold the leases. Therefore, it is inaccurate to state that nationals from a non-reciprocal country may forfeit leases. The measures that can be taken by the U.S. when interests in mineral leases are owned in violation of the reciprocity provision are: (1) causing sale of the stock by the foreign entity or sale of the lease by the U.S. corporation; (2) forfeiture of the offending interest, that is, the stock owned by the foreign entity; (3) cancellation of the U.S. corporation's lease. The first question could be restated thus: "Must sanctions be applied where leases are acquired by U.S. corporations with stockholders from a non-reciprocal country prior to or during Interior's review process? How can these leases be identified?"

GAO note: Page numbers references may not correspond to the page numbers in this final report.

The second question should also be modified by removing the mention of lease forfeitures and replacing it with a reference to the application of sanctions.

Finally, the third question mentioned on page 18 involves reimbursement by Interior as a result of its taking measures to eliminate the violation. Actually, Interior has not considered and is not considering this issue because, as we see it, we are not required under the law to reimburse a company or an individual that is in violation of the statute.

(III) In addition to the above changes, below are issues which require minor modifications:

Page 1

In the first paragraph on page 1, the report states: "One of these laws is the Mineral Lands Leasing Act of 1920 (MLLA) (30 U.S.C. * 181), which generally authorizes the leasing of development rights for coal, phosphate, sodium, potassium, oil, oil shale, gilsonite, and gas found on Federal onshore lands to a foreign citizen if the foreigner's country of origin allows U.S. citizens similar opportunities in that country." This statement is inaccurate in several respects, including the fact that we do not issue leases to foreign citizens. It is not only the Mineral Leasing Act of 1920 (MLA) that regulates foreign investments in onshore Federal mineral leasing, but also several other statutes which incorporate the MLA by reference, such as the Mineral Leasing Act for Acquired Lands, 30 U.S.C. * 351 et seq. We suggest that this sentence be rephrased as follows: "One of these laws is section 1 of the Mineral Leasing Act of 1920 (MLA) (30 U.S.C. * 181), which either directly or by incorporation into other leasing laws generally authorizes the leasing of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite, gas, and sulfur (in certain situations) found on Federal onshore lands to U.S. citizens, associations of U.S. citizens and U.S. corporations. This limits foreign participation to stock ownership, holding or control in a U.S. corporation." In addition, the statement introducing the quotation from section 1 should be modified as follows: "Section 1 of the MLA limits the opportunity for foreign citizens to own interests in leases in the following manner:" The sentence concerning offshore and other minerals should follow the quotation from section 1.

Page 2

At the top of page 2, the report states: "... identify lease applicants from those countries, and prohibit the issuance of leases to aliens from non-reciprocal countries." Actually, there are no lease applicants or lessees from foreign countries. This sentence should be revised to read: "...identify lease applications by companies with stockholders from those countries, and prohibit the issuance of leases to applicants with stockholders from non-reciprocal countries."

The report also states at the top of the page that "Interior has only once determined a country to be non-reciprocal." This would be more accurately stated as "Interior has only once formally determined a country to be non-reciprocal." Our records show that the United Kingdom was considered non-reciprocal until 1936 although we are unaware of a formal determination. In addition, please also refer to our discussion of India under Part I above.

Pages 10, 18, and 29

On these pages of the report, reference is made to Kuwait's "appeal" of the Secretary of the Interior's non-reciprocity decision. This should be clarified by mention of the U.S. District Court or by specifically identifying the litigation over this decision as Santa Fe International Corporation v. Clark, Civil No. 83-347 (D. Del.). In addition, the reference on page 18 implies that the issue of sanctions is involved in the litigation. The issue of sanctions will only be addressed if we prevail in court.

Page 12

We do not agree that the Mineral Leasing Act "mandates that the Secretary of the Interior review the laws, regulations, and customs of foreign countries." The Act only prohibits ownership of an interest in a lease by a citizen of a country which denies like or similar privileges. The Interior Department has implemented this requirement by reviewing the laws, customs and regulations of any foreign country where substantial questions are raised concerning the denial of like or similar privileges.

The second paragraph on page 12 is misleading in its reference to "prior to 1982." This phrase should be deleted since neither the statute nor the regulations specified how reciprocity determinations would be made after 1982. This phrase, "prior to 1982, " is also used, in the same misleading manner, in the second paragraph on page 14.

Page 13

In the middle paragraph, the report states that Interior relies "extensively on the State Department to help compile, translate and analyze the laws, customs, and regulations of the nations being reviewed." (Emphasis added.) This statement was summarized on p. iii as "Interior relies heavily on the State Department to analyze the laws, customs, and regulations of a foreign country." While it is true that, in the past, Interior did rely heavily on State for factual information and analysis of foreign laws, customs, and regulations, this is no longer the case, especially in the interpretive aspects. For example, during our review of Sweden and Cyprus, Interior received no legal or analytical assistance from State. However, State supplied useful informational cables from U.S. embassies in support of our effort. The report should distinguish between past and current practices in this regard.

In the last paragraph of this page, mention should be made that Interior conferred informally with officials of the Treasury, Commerce, Energy and State Departments as well as with the Office of the U.S. Trade Representative. The officials contacted were also supplied with copies of Interior's Federal Register notices relative to the countries involved.

Page 14

At the bottom of this page are three indented questions. In the second question, the word "beneficiary" should be replaced by "beneficial."

Page 17

In the first paragraph, the report states that "(data)... does not distinguish between foreign and U.S. leaseholder." Actually, there are no foreign leaseholders. Foreign citizens may only own an interest in a lease through stock ownership, stock holding, or stock control in a U.S. corporation. This statement should be clarified to read "between foreign and U.S. owners of interests in onshore Federal mineral leases."

pg. 5

Also on page 17, in the second paragraph, the report refers to "coal and other hard-rock mineral lease applicants." The use of the term "hard-rock" is inaccurate when referring to leases issued under the Mineral Leasing Act of 1920. "Hard-rock minerals" is a term which applies to minerals not covered by the Minerals Leasing Act. The designation of "hard-rock" should be replaced by the word "solid."

Pages 44-45

The report refers to the "Associate Attorney General." The correct title is "Assistant Attorney General."

DEPARTMENT OF STATE
Comptroller
Washington, D.C. 20520

APR 20 1984

Dear Frank:

I am replying to your letter of March 20, 1984, which forwarded copies of the draft report: "The Mineral Lands Leasing Act Reciprocity Provision -- Implementation and Constraints."

The enclosed comments on this report were prepared in the Bureau of Economic and Business Affairs.

We appreciate having had the opportunity to review and comment on the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,

Roger

Roger B. Feldman

Enclosure:
As stated.

Mr. Frank C. Conahan,
Director,
National Security and
International Affairs Division,
U.S. General Accounting Office,
Washington, D.C. 20548

GAO note: Although not reprinted here, State also provided a number of other editorial and technical comments which have been incorporated in the report where appropriate.

DEPARTMENT OF STATE COMMENTS

GAO DRAFT REPORT: THE MINERAL LANDS LEASING ACT RECIPROCITY PROVISION -- IMPLEMENTATION AND CONSTRAINTS

Page 23, first paragraph: delete the second sentence and insert "The fundamental objectives of the GATT are the reduction of trade barriers and the application of existing barriers on a most-favored-nation basis."

Page 23, third paragraph: delete the last two sentences and insert, "The United States has FCN treaties with over 40 countries. These FCN treaties contain basic most-favored-nation and national treatment provisions, but some treat mining on a reciprocal basis."

Page 24, first paragraph: delete the first sentence and insert, " The United States has negotiated Bilateral Investment Treaties with Egypt, Panama, Haiti, Senegal and Morocco. These treaties have not yet been submitted to the Senate."

Pages 29-31, the section on Kuwait does not go into any depth in exploring how Interior reached the decision in finding Kuwait non-reciprocal. The study might have examined more thoroughly why Interior first found Kuwait reciprocal, and then reversed its position.

Pages 30-31, the description of the AOC oil concession arrangement with Kuwait is less than complete. It is more that AOC is a joint concessionaire of both Kuwait and Saudi Arabia (a factor that may explain more why its concession has not been nationalized than any question of discrimination against American investment), in addition to the fact that the concession is in off-shore areas where ownership is jointly shared between Kuwait and Saudi Arabia.

Page 33-34, the section on Qatar, delete both paragraphs and substitute the following:

Qatar's Basic Law of 1970 and subsequent laws and decrees do not address the issue of natural resources. The state has exercised rights of ownership over oil and gas reserves, and would probably claim other commercially exploitable resources if they were discovered. Concessions are awarded to private companies, although increasingly these are required to be joint ventures in which the Qatari government itself is the majority shareholder.

According to the 1981 Price Waterhouse study on investment policies, (1) all companies must be at least 51 percent owned by Qatari nationals or be sponsored by Qatari nationals; (2) inward investment may be restricted to areas requiring foreign technology or very large capital contributions where local resources are inadequate; (3) there is no particular restriction on foreign nationals being employed, although in practice Arab nations are given preference and (4) there is a general embargo on any company which has dealings with Israel.

Page 34, delete the first paragraph on Saudi Arabia and substitute that following:

Saudi Arabia's Mining Code states that all mineral deposits are the state's exclusive property. Private companies may request permit concessions for prospecting and production from the Ministry of Petroleum and Mineral Resources. However, the U.S. Embassy reported that the Saudi government's purchase of the producing assets of ARAMCO, the large oil company, would seem to foreclose future non-Saudi or non-governmental ownership of petroleum concessions in Saudi Arabia. Although ARAMCO is now effectively a Saudi entity, all of its exploration activities are still carried out in cooperation with the former partners.

Page 35, delete the second paragraph and substitute the following:

Under the Saudi Regulations on Investment of Foreign Capital, foreign investments must be approved by the government on the basis of the benefits to the country. Any firm or any of its affiliates contributing to Israel's economic or defense capabilities may be boycotted, subject to a determination by the Saudi government. According to the 1969 Ministry of Labor regulation, the number of Saudi employees in a company must not fall below 75 percent or their remuneration below 51 percent of the total; however, the Ministry usually approves exceptions to this regulation upon request if sufficient Saudi labor is not available.

Page 38, the last paragraph refers to Turkish investment in the U.S., while the comparable section in the descriptions of all the other countries refers to U.S. or foreign investment in the country in question. We therefore doubt this paragraph is relevant. Point two of the paragraph is also out of date and factually incorrect. If the paragraph is to be retained we suggest it be worded as follows: "There appears to be no expression of interest by Turkish mineral producers in investing in the U.S."

Page 39, first paragraph, last line: add the sentence, "Considerable U.S. and other foreign investment in the petroleum sector was nationalized in 1976."

Richard J. Smith
Richard J. Smith
Deputy Assistant Secretary
International Finance
and Development

GAO note: Page number references may not correspond to page numbers in this final report.

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