

Handbook 15: AID-Financed Commodities
Chapter 2: Eligibility of Commodities and Commodity-Related Services
Section 2A: Introduction

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CHAPTER 2

ELIGIBILITY OF COMMODITIES AND COMMODITY-RELATED SERVICES

2A. Introduction

The implementation procedures described in this chapter, based upon statutory and administrative requirements and AID policies (see Handbook 1, Supp. B, Chapters 4 and 5), are designed to limit the commodities financed in AID programs to those that will provide the maximum benefit to the Borrower/Grantee (B/G) at the least cost to the United States. A commodity transaction may be eligible or ineligible for AID financing based not only on the nature of the commodity but also based on its source, end use, price, supplier, etc. Commodity-related services (defined as delivery services and incidental services), must meet similar tests of eligibility. This chapter explains how to implement these considerations in both AID-financed project and non-project assistance.

Handbook 15: AID-Financed Commodities
Chapter 2: Eligibility of Commodities and Commodity-Related Services
Section 2B: Implementation of Commodity Source Requirements

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2B. Implementation of Commodity Source Requirements

1. Designation of Eligible Source

a. AID loans, grants, contracts, and other obligating documents must prescribe an "AID Geographic Code" which defines the eligible source for foreign exchange procurement. The eligible source for Development Assistance Loans is AID Geographic Code 941 (Selected Free World). The eligible source for Economic Support Fund loans is AID Geographic Code 000 (United States). The eligible source for all grants (Development Assistance or Economic Support Fund) is Code 000, except when the recipient is a relatively least developed country (RLDC), in which case the eligible source is AID Geographic Code 941.

b. For discussion of source requirements for disaster relief and grants to private, nonprofit organizations and educational institutions, see Handbook 8 - Foreign Disaster Assistance, and Handbook 13 - Grants. The source requirements for these types of assistance do conform in general to AID's source policies but the implementation procedure may vary.

c. By statutory and/or administrative source rules, the procurement of motor vehicles, pharmaceuticals, agricultural commodities, and fertilizer is limited to the United States.

2. Commodity Source and Componentry Rules

All commodities financed by AID must meet the following tests of source/origin and componentry:

a. "Source" means the country from which a commodity is shipped to the cooperating country, or the cooperating country itself if the commodity is located there when it is purchased. To be eligible for AID financing a commodity must be of a source designated as eligible in the loan or grant agreement and implementing documents, and it must also have been mined, grown, or through manufacturing, processing, or assembly been produced in an eligible source country. A commodity is produced when, through manufacturing, processing or substantial and major assembling of components, a commercially recognized new commodity results that is substantially different in basic characteristics or in purpose or utility from its components. Merely packaging various items together for a particular procurement or relabeling items does not constitute production of a commodity. The part of the eligibility requirement concerning where the commodity is mined, grown, or produced is often referred to as the "origin" requirement, but it should be noted that the origin requirement is included as part of the source requirement.

b. "Components" are the goods that go directly into the production of a manufactured commodity. AID componentry rules for manufactured commodities are as follows:

(1) Any component from a non-Free World country makes the commodity ineligible for AID financing.

(2) If the commodity contains components from countries included in Geographic Code 935 which are not included in the authorized geographic code for the procurement, the components are limited according to the following rules:

(a) They are limited only if they are acquired by the producer of the commodity in the form in which they were imported.

(b) The total cost of such components to the producer of the commodity (delivered at the point of production of the commodity) may not exceed 50 percent of the lowest price (excluding the cost of ocean transportation and marine insurance) at which the supplier makes the commodity available for any export sale. 1/

(c) For the purpose of calculating eligible components, the cooperating country will be deemed to be an authorized source country whenever any geographic code other than Code 000 is authorized.

(3) AID may prescribe percentages other than 50 percent for specific commodities. Current modifications of the componentry limitations are contained in Appendix 2A. The percentage of allowable foreign components may be decreased for a specific procurement by the USAID or AID/W at the request of the cooperating country. In addition, the Director of the Office of Procurement is authorized to modify the componentry limitations when:

(a) it is necessary to conform with established industry production practices; or

(b) the transaction conforms to the intent of the componentry rules (i.e., the benefit of the source and origin rules accrues to authorized source countries), and it is in the best interests of the program or project to finance the transaction.

(4) Other waivers of componentry limitations are handled as source waivers under the procedures described in 2B4.

c. The componentry rules are generally applied to each item that is sold as an independent unit or commodity. There are some special situations in which componentry rules may be applied on a different basis.

(1) When a package installation is procured as a single entity, AID may authorize the componentry rules to be applied to the installation as a whole. For project assistance, the decision is made by the Geographic Bureau with the concurrence of the Office of Procurement (MS/OP). For non-project assistance, the decision is made by MS/OP with the concurrence of the Geographic Bureau.

(2) When the product being purchased is a kit (i.e., items such as scientific instruments, tools, or medical supplies packaged as a single unit), the kit will be considered the produced commodity and the items included in the kit will be the components. If AID decides for any reason to treat the items in a kit as separate commodities, the solicitation document should so state.

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1/ The cost of foreign components is computed on the basis of cost at the time of delivery to the point of production in an eligible source country. The cost is not to be calculated on a net basis to reflect an anticipated rebate or drawback of import duty.
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(3) For spare parts, the componentry rules are applied to each separate shipment of parts as a whole, not to each individual spare or replacement part. Parts must be packed in and shipped from an eligible source country.

3. Nationality Requirements

a. The nationality requirements that suppliers of commodity and commodity related services must meet are described in Handbook 1, Supp. B, Chapter 5C1.

b. These requirements apply to suppliers of commodities, whether or not commodity-related services are included. They do not apply to suppliers of commodities that are procured through U.S. Government agencies unless the agency purchases the commodities specifically for AID.

c. Suppliers who furnish commodities in connection with services which are not commodity-related are subject to the nationality requirements for suppliers of services which are set forth in Handbook 1, Supp. B, Chapter 5D.

4. Shipments from Free Ports and Bonded Warehouses

a. General

Free ports and bonded warehouses are often used in international trade. Special eligibility tests, as discussed below, apply to commodities that pass through or are

packaged, assembled or produced in a free port or bonded warehouse.

b. Definitions

(1) "Free ports" are ports or areas within ports in which vessels can load or unload and where commercial or manufacturing activities may be carried on without payment of import or export duties. For the purposes of this section, free trade zones and foreign trade zones are considered free ports.

(2) "Bonded warehouses" are storage or production areas under the supervision of local customs authorities. Goods shipped to a bonded warehouse are not subject to the payment of duty unless brought into the economy of the country in which the bonded warehouse is located.

c. Commodities Passing Through Bonded Warehouses or Free Ports

(1) AID may finance an otherwise eligible commodity which merely passes through a free port or bonded warehouse, provided that the commodity has been shipped from an eligible source country to the free port or bonded warehouse.

(2) When a commodity is simply packaged or subjected to minor assembly operations in a free port or bonded warehouse, it retains its original source, as above. When a transformation in the commodity occurs, however, the commodity is considered to have been produced in the country in which the free port or bonded warehouse is located. For example, if Code 000 is the authorized code and thread manufactured in the U.S. is shipped to a free port in Belgium, where it is woven into fishing nets, the fishing nets would be considered of Belgian origin and, therefore, ineligible for financing.

d. Commodities Produced in Free Ports or Bonded Warehouses

(1) AID may finance an otherwise eligible commodity that is produced in a bonded warehouse or free port only if the port or warehouse is located in an authorized source country. For example, when Code 941 is the authorized code, Australian yarn in a raw form which is thrown and textured in a bonded warehouse in Indonesia would be eligible for AID financing if the delivered cost of the raw yarn was less than 50 percent of the sales price of the finished yarn. However, if the operation were performed in a bonded warehouse in Belgium, the processed yarn would be considered Belgian origin and would be ineligible for AID financing, regardless of the country from which the raw yarn was imported.

(2) A determination of what degree of assembly, manufacture, or processing constitutes production is not always readily apparent. Consultation with MS/OP/COMS is recommended for guidance in individual cases.

e. Additional Rules

(1) Shipment: In order for a commodity shipped from a free port or bonded warehouse to be eligible for AID financing, it must not have been shipped to the free port or bonded warehouse, as well as from the free port or bonded warehouse, by a transportation medium owned, operated or under the control of any country not included within AID Geographic Code 935. Additionally, items must not be shipped from the free port or bonded warehouse under any ocean or air charter which has not received prior approval by MS/OP/TRANS.

(2) Eligibility of Delivery Services: When a commodity is shipped out of a free port or bonded warehouse, ocean transportation costs for shipment to the free port or bonded warehouse are eligible for AID financing as follows:

(a) The commodity was shipped on vessels under the flag registry of a country within the authorized geographic code, if the commodity was shipped in anticipation of AID financing, or

(b) The commodity was shipped on vessels under the flag registry of a country within Geographic Code 935, if the commodity was not shipped in anticipation of AID financing.

(3) Payment Documentation: The supplier shall provide the following additional documentation for commodities shipped from a free port or bonded warehouse:

(a) a copy of the bill of lading (bearing a notation of the freight cost) covering

(b) if such a bill of lading is not available to the supplier, provide the following information and certify to the accuracy of the information: the country or area from which the commodities were shipped to such free port or bonded warehouse; the name and flag of the vessel which transported the commodities from the source country to the free port or bonded warehouse; the cost of the freight on such shipment; and the free port or bonded warehouse to which shipment was made from the source country; or

(c) if commodities have been commingled in the warehouse in such a way that the shipment out of the warehouse cannot be related to particular shipments into the warehouse, the supplier shall certify to the best of its knowledge and belief that a portion of the commodities was transported to the free port or bonded warehouse as required by (2)(a) and (b), above, and the quantity for which AID financing is sought does not exceed that amount.

(4) Maximum Price: For sales through or out of a free port or bonded warehouse, the purchase price, including transportation costs to a cooperating country, of a commodity which has passed through a free port or bonded warehouse shall not exceed:

(a) the maximum price f.o.b. or f.a.s. source country eligible for AID financing under the price provisions of 201.63 of Regulation 1 for non-project assistance and the paragraph 3 of the Project Supplier's Certificate, form AID 1450-4, for project assistance; and

(b) transportation cost calculated on the basis of the prevailing ocean freight rate for shipments using the most direct route from the source country to the cooperating country on the type and flag of vessel on which the commodity actually moved from the free port or bonded warehouse to the cooperating country; and

(c) In no case shall the purchase price of a commodity f.o.b. or f.a.s. a free port or bonded warehouse exceed the maximum c. & f. price as established above, minus transportation costs from the free port or bonded warehouse to the cooperating country, calculated on the basis of the prevailing ocean freight rate from the free port or bonded warehouse to the cooperating country for the type and flag of vessel on which the commodity actually moved between those points.

f. Applicability of the Cargo Preference Act of 1954

The Cargo Preference Act of 1954 applies to shipments from free ports and bonded warehouses. It does not apply, however, to shipments into a free port or bonded warehouse unless, at the time of such shipment, the commodity is moved in anticipation of AID financing.

5. U.S. Treasury Department Foreign Assets, Sanctions, Transactions and Funds Control Regulations

It is AID policy not to finance or participate in any transaction prohibited by U.S. Treasury Department Foreign Assets, Sanctions, Transactions and Funds Control Regulations, published in 31 CFR Parts 500-599. Standard AID source requirements preclude such financing. AID relies on its monitoring procedures to avoid transactions when they are prohibited under these regulations. (See policies and rules in Handbook 1, Supp. B, Chapter 6B and AID Regulation 1, 201.11(g).)

6. Waivers

a. Waiver Criteria

(1) Procurement of AID-financed commodities from sources inconsistent with the authorizing document may not be undertaken unless a waiver has been issued. Waivers of geographic source requirements may be necessary at times and can be authorized in accordance with the criteria in Handbook 1, Supp. B, Chapter 5B4 and the additional criteria for motor vehicles, pharmaceuticals, agricultural commodities and fertilizer in Handbook 1, Supp. B, Chapter 4C. A waiver is not required for any individual transaction whose value does not exceed \$5,000, exclusive of transportation costs.

b. Special Considerations

(1) All non-U.S. purchases whether from sources authorized in the implementing document or sources specified in a waiver will be made in accordance with AID's normal procurement policies including price limitations and the requirement to pay no more than the lowest available competitive price. Included in the price limitation is the requirement that the delivered price to the recipient country be lower than the delivered price from the United States in comparable sales considering quantity, quality, grade, period of delivery, supply area, terms of sale, and class of purchaser.

(2) Waivers issued for procurement outside the country(ies) authorized in the implementing document are to expand the procurement source only to the extent necessary. (Note: Individual waivers do not normally indicate the code of any specific country except when approving local currency procurement.) The preference is to waive to Code 941, and only if that is not sufficient should a Code 899 waiver be granted.

c. Waiver Authority

Authority to issue waivers of geographic source policy in the procurement of commodities is exercised under the rules set forth in Handbook 1, Supp. B, Chapter 5B4c which include directions for clearance, reporting and control of waivers. Waiver authorities for the additional requirements for motor vehicles, pharmaceuticals, agricultural commodities and fertilizer are set forth Handbook 1, Supp. B, Chapter 4C.

d. Preparation of Waivers

Waiver requests submitted to the Administrator or Deputy Administrator are prepared by the appropriate Bureau. (See Appendix 2B for sample format.) In addition to the required concurrences, each waiver request is to contain the following:

(1) A statement of the authorized source of procurement and the proposed sources from which procurement probably will be made if the waiver is granted;

(2) The identifying number or title of the authorizing document, project or program which specifies the authorized source of procurement;

(3) A description of the commodities involved including their approximate dollar value, and type of funding;

(4) The information upon which a waiver determination can be made, based on one of the appropriate criteria, including in the case of surplus agricultural commodities, why it would be impractical to effect such procurement in the United States;

(5) Certification as required (See Handbook 1, Supp. B, Chapter 5B4b).

Handbook 15: AID-Financed Commodities
Chapter 2: Eligibility of Commodities and Commodity-Related Services
Section 2C: Establishing Commodity Eligibility

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2C. Establishing Commodity Eligibility

1. Introduction

This section covers the eligibility of commodities based on their appropriateness for AID financing in both project and non-project assistance. It is AID policy to finance only those commodities which it has determined are eligible in terms of general and specific program objectives. AID wants to assure that the commodities it finances make a positive contribution to development, so it has established broad limitations on the categories of commodities that are eligible for financing. Thus, there are restrictions on the financing of luxury goods, unsafe or ineffective products, used equipment, etc. AID uses the U.S. Department of Commerce Schedule B numbers (ten-digit codes used for reporting exports from the United States) as a means of classifying commodities in order to define commodity eligibility and applicability of special provisions and to record commodity transactions. A specific Schedule B number and commodity description should be stated in documents submitted to AID for payment.

2. Commodity Eligibility Listing

The AID Commodity Eligibility Listing (see Appendix B) uses Schedule B numbers to indicate the eligibility of commodities for AID financing. In Part I of the Listing, groups of Schedule B numbers with short commodity descriptions are designated as eligible, eligible with specified limitations, or ineligible; Part II provides guidance on the additional considerations and conditions applicable to certain commodities, and Part III specifies certificates that are required to support eligibility for some commodities and gives

detailed technical definitions of eligibility standards for some commodities. This Listing is designed so that it may be incorporated in assistance agreements as appropriate. Because this listing also provides information on eligibility criteria for commodities and special provisions applicable to AID financing, it is a handy reference guide for suppliers, importers, and banks. Certain commodities are restricted or ineligible because of statutory and administrative determinations. Restricted commodities and those ineligible commodities for which waivers may be granted require special consideration before AID financing will be authorized. These commodities are discussed in Handbook 1, Supp. B, Chapter 4C.

3. Source of Commodity Import Program Procedures

a. Commodity Import Program assistance agreements will normally authorize AID financing of those commodities identified as being eligible in the AID Commodity Eligibility Listing, although commodity eligibility may be limited to certain commodity categories specified in the agreement or implementing documents. However, under Commodity Import Program assistance agreements, AID reserves the right, upon review of the supplier's Application for Approval of Commodity Eligibility, form AID 11, (see Appendix 2C), to decline to finance any commodity when, in its judgment, such financing would adversely affect AID or foreign policy objectives of the United States or could jeopardize the safety or health of people in the importing country.

b. The requirement that AID approve the eligibility and suitability of commodities prior to financing them derives from Section 604(f) of the Foreign Assistance Act (FAA) as amended, which reads as follows:

"No funds authorized to be made available to carry out Part I of this Act shall be used under any commodity import program to make payment to a supplier unless the supplier has certified to the agency primarily responsible for administering such Part I, such information as agency shall by regulation prescribe, including but not limited to, a description of the commodity supplied by him/her and its condition, and on the basis of such information such agency shall have approved such commodity as eligible and suitable for financing under this Act."

c. The usual method of implementing Section 604(f) involves use of the form AID 11, Application for Approval of Commodity Eligibility (Appendix 2C). Section 201.11(k) of AID Regulation 1 (Appendix A) incorporates the statutory requirement for an AID determination of the eligibility of commodities before financing. Section 201.52(a)(8) of AID Regulation 1 requires that a supplier provide a form AID 11, countersigned by AID, as one of the documents needed to obtain payment for an AID-financed transaction.

4. Commodity Eligibility Approval Under Commodity Import Programs

a. Procedures

(1) The supplier of a proposed AID-financed transaction submits a form AID 11, to AID/W, the Office of Procurement (MS/OP/COMS). This is usually done after the supplier has received a letter of credit or direct Letter of Commitment, but before shipment of the commodity. If the supplier does not have a letter of credit, it must present other evidence that it has a firm contract to furnish the commodity for which it seeks AID approval. The form AID 11 provides space for the commodity description, including the Schedule B ten-digit code, commodity condition, source, componentry, and other data pertinent to the review of the Application and required for certain statistical purposes.

(2) A form AID 11 will be approved if the commodity is eligible under the implementing document and if the commodity meets the eligibility criteria established in the AID Commodity Eligibility Listing.

(3) One of the criteria for commodity eligibility is that the purchase price of the commodity satisfies the price rules set forth in Subpart G of AID Regulation 1. A determination that the price criteria are met need not be made at the time the form AID 11 is acted upon. AID always has the right of post-audit under the terms of the Supplier's Certificate and Agreement with the Agency for International Development (form AID 282, Appendix 2D) which the supplier executes at the time of payment. However, where it is apparent that the price shown on the form AID 11 does not meet the requirements of Subpart G of AID Regulation 1, the form AID 11 will not be approved in order to avoid probable refund action or litigation subsequent to financing.

(4) The procedure for approval of commodity eligibility is also used to monitor the eligibility of suppliers. Eligibility status of the supplier is determined by reference to the List of Parties Excluded from Federal Procurement or Nonprocurement Programs. (See Chapter 12.)

b. Commodity Eligibility Under Direct Reimbursement Procedure

When AID finances commodities by reimbursing the cooperating country for eligible transactions initially financed with the B/G's own foreign exchange, the use of the form AID 11 may not be required, since MS/OP/COMS analysts have an opportunity to check all aspects of the eligibility of the transaction before it is approved for AID financing. The analysts also have available at that time a supplier's certificate in which the supplier certifies as to the description and condition of the commodity.

5. Determination of Commodity Eligibility Under Project Assistance

Under project assistance, the selection of commodities to be authorized for financing is made during the project's formulation. Commodities which are normally ineligible may be authorized for financing if included by AID in the project approval document. (Commodities ineligible under 2C6 below are subject to the provisions in the applicable Sections of Handbook 1, Supp. B.) Such commodities should be listed in the project agreement or implementing document together with any special instructions or provisions that may be required under AID commodity eligibility policies. Subsequently, a normally ineligible commodity may be made eligible by a determination of the Geographic Bureau or the responsible field office that such a commodity is required for the completion of the project. Commodities which are normally eligible may be excluded from AID financing; e.g., commodities obtainable with local currency or from other donors. Project agreements, contracts, or institutional grants which do not specify eligible commodities should include a reference to the AID Commodity Eligibility Listing and require prior AID approval for the financing of normally ineligible commodities.

6. Ineligible Commodities

AID financing of commodities falling within the following categories are normally prohibited. (See Handbook 1, Supp. B, Chapter 4D):

- a. Military Equipment;
- b. Surveillance Equipment;

- c. Abortion Equipment and Services;
- d. Unsafe or ineffective products such as certain pesticides, food products, pharmaceuticals, hazardous chemicals, or other unsafe or ineffective products;
- e. Luxury goods;
- f. Goods in support of police and other law enforcement activities; and
- g. Weather modification equipment.

7. Restricted Eligibility for Certain Commodities

Proposed AID-financed procurements of agricultural commodities, motor vehicles, fertilizer, pesticides, rubber compounding chemicals and plasticizers, pharmaceuticals and used equipment are subject to the restricted eligibility requirements described in Handbook 1, Supp. B., Chapter 4C, under both project and non-project assistance.

8. Other Eligibility Requirements - Special Provisions

Certain other commodities must meet special requirements to be eligible, such as the submission by the supplier of documents which attest to results of analyses, inspections, and/or compliance with quality requirements. These special provisions are set forth in the AID Commodity Eligibility Listing, Appendix B, Part III. The special provisions are prescribed when AID negotiates assistance agreements and are incorporated as requirements in implementing documents and letters of credit along with other supplier obligations. In addition to those provisions which are in the Commodity Eligibility Listing, AID may require more specialized or additional provisions when necessary to protect the integrity of commodity assistance programs in certain countries or under certain agreements.

9. Commodity Price Requirements

The price requirements for commodities and commodity-related services are described in Handbook 1, Supplement B, Chapter 17. The price provisions of AID Regulation 1 are applicable to nonproject assistance procurements and any other procurements for which the supplier is required to execute a form AID 282. For project procurement, the applicable price provisions are established by the Supplier's Certificate and Agreement with AID for Project Commodities, AID 1450-4 (Appendix 2D).

10. Responsibilities

a. The Geographic Bureau is responsible for incorporating into agreements and implementation letters the language, procedures, and references to other documents necessary to assure that only those commodities intended to be eligible for AID financing under particular loan/grant are authorized for procurement.

b. The Geographic Bureau is also responsible for incorporating into nonproject assistance agreements a provision reserving to AID the right to decline financing of any normally eligible commodity or commodity-related service when, in its judgement, such financing would adversely affect AID or U.S.-foreign policy objectives or could jeopardize the safety or health of people in the importing country. Such right will be exercised no later than commodity prevalidation by AID/W (form AID 11 approval) or, if payment is to

be made by AID directly and prevalidation is not required, at such a time as AID is requested to pay the supplier or reimburse the borrower/grantee for proposed AID-financed transactions. This right should be incorporated into agreements and implementation letters and the language should be cleared in draft by AID legal counsel.

c. The Assistant Administrator for the Geographic Bureau, his/her designee or the principal officer in the field responsible for the program determines whether a normally ineligible commodity should be authorized for AID financing, or whether AID financing should be denied for a specific commodity that is normally eligible. Determinations on financing normally ineligible items are made in accordance with paragraph 4A1c of Handbook 1, Supplement B.

d. The Office of Procurement develops and interprets AID commodity eligibility criteria, assists Bureaus and USAID's in planning and negotiating programs having a significant commodity element, provides advice on the availability and suitability of commodities, and reviews the eligibility and suitability of specific commodities proposed for AID financing. Geographic Bureaus may advise MS/OP as to the eligibility and suitability of commodities in specific instances, consulting AID Missions and/or cooperating country governments as appropriate.

e. MS/OP/COMS reviews form AID 11's submitted by suppliers and, upon determination that the commodity is "eligible and suitable," approves the form AID 11. If MS/OP/COMS questions the eligibility or suitability of a commodity, MS/OP/COMS may consult with the Geographic Bureau before rejecting the transaction.

f. USAIDs are responsible for informing the cooperating government of AID's commodity eligibility requirements and providing such other guidance relative to commodity eligibility as may be appropriate.

g. Borrower/Grantees are responsible for informing institutions and importers in the cooperating country of AID's commodity eligibility requirements and of their own responsibilities.

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Chapter 2: Eligibility of Commodities and Commodity-Related Services
Section 2D: Establishing Eligibility of Delivery Services

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2D. Establishing Eligibility of Delivery Services

1. Introduction

This section outlines AID's policies and procedures concerning the eligibility for financing of delivery services connected with commodities which AID finances. Chapter 7 of Handbook 1, Supp. B, discusses policies more comprehensively. Cargo preference requirements, which may also affect the eligibility of transportation costs, are discussed in Chapter 7 of Handbook 15 and in Chapter 10 of Handbook 1, Supp. B.

2. Definition

Delivery services means any service customarily performed in a commercial export transaction which is necessary to effect a physical transfer of commodities to the cooperating country. Examples of such services are export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. Work and materials necessary to meet AID marking requirements are also included.

3. Flag Eligibility - Ocean Transportation

a. Policy

(1) The eligibility of ocean transportation services is determined by the flag registry of the vessel.

(2) AID will normally authorize financing of ocean transportation cost as follows:

(a) When the authorized source for procurement is Code 000 (U.S.), AID will finance ocean transportation only on U.S. flag vessels.

(b) When the authorized source for procurement is Code 941 (Selected Free World), AID will finance ocean transportation on vessels under flag registry of the United States, other countries in Code 941, and the cooperating country.

(c) When commodities whose eligibility is restricted to the U.S. source are purchased under agreements which would normally authorize Code 941 procurement of commodities, AID will finance the ocean transportation in accordance with paragraph (b) above.

(d) When shipment is made under a through bill of lading issued by an eligible flag carrier AID will finance costs incurred on vessels under flag registry of any free world country if the costs are part of the total cost paid to the eligible flag carrier.

(e) When necessary to assure adequate competition and competitive pricing for the shipment of bulk commodities^{1/}, AID will authorize financing of ocean transportation on vessels under flag registry of countries included in Code 941 and the cooperating country or on vessels under flag registry of countries included in Code 935 (Special Free World). Such expanded authorization would allow the financing of ocean transportation on Code 941 or Code 935 vessels, other than U.S. flag vessels, only to the extent that U.S. flag vessels originally authorized are not available to carry the commodities for which transportation is solicited. The Office of Procurement (MS/OP) determines when it is necessary to authorize financing in accordance with this paragraph.

(3) In cases where the United States owns excess local currency, AID, to the maximum extent possible, shall use the excess local currency rather than U.S. dollars to finance freight on vessels under flag registry of the cooperating country.

b. Waiver Criteria

If not previously authorized under paragraph 2D3a(2) of this chapter, waivers to expand the flag eligibility requirements to allow use of vessels under flag registry of the cooperating country, Code 941 (Selected Free World), Code 899 (Free World), or Code 935 (Special Free World) countries may be authorized by MS/OP when:

(1) It is necessary to assure adequate competition in the shipping market in order to obtain competitive pricing, particularly in the case of bulk cargoes and large cargoes carried by liners, subject to U.S. flag restriction contained in paragraph 2D3a(2)(e) of this chapter.

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1/ For purposes of this Section, a bulk commodity is any commodity to be financed in sufficient quantity to warrant the use of chartered shipping for delivery.
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(2) Eligible vessels can provide liner service for commodities that cannot be containerized only by transshipment, and vessels under flag registry of countries to be authorized by the waiver provide the required service without transshipment;

(3) Eligible vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment would increase costs or significantly delay receipt of the cargo;

(4) Eligible vessels are found unsuitable for loading, carriage, or unloading methods required, or for the available port handling facilities;

(5) Eligible vessels do not provide liner service from the shipment's geographic source to the destination country;

(6) Eligible vessels do not provide liner service between the particular port of loading/discharge stated in the procurement's delivery terms, provided the particular port is named in a manner consistent with normal trade practices; or

(7) Eligible vessels decline to accept an offered consignment.

c. Waiver Authority

(1) Waivers may be granted by the Office of Procurement (MS/OP), acting in consultation with the concerned Geographic Bureau.

(2) Officials in the field who have authority to waive source requirements for commodities also have a limited amount of authority to waive flag eligibility requirements. They may waive only for shipment of commodities for which the official has approved a commodity source waiver and for which the cost of shipment does not exceed 25 percent of the official's authority to waive commodity source requirements. A copy of each transportation waiver approved should be sent to the Transportation Division of MS/OP (MS/OP/TRANS).

d. Certification

Each waiver to Code 899 or Code 935 shall contain a certification by the approving official that "The interests of the United States are best served by permitting financing of transportation services on ocean vessels under flag registry of free world countries other than the cooperating country and countries included in Code 941."

4. Air Transportation

a. Eligible Carriers

(1) The eligibility of air transportation is determined by the flag registry of the aircraft. The term "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(2) Grant-Financed Transactions

A U.S. Government statute requires the use of U.S. flag air carriers for all AID grant-financed international air travel and transportation unless such service is not available. Criteria for determining availability are set out in this Chapter. When U.S. flag air carriers are not available, any Code 935 flag air carrier may be used.

(3) Loan-Financed Transactions

(a) There is no statutory requirement for use of U.S. flag air carriers under loan-financed transactions.

(b) When the authorized source under a loan is Code 000, AID's policy on financing air transportation is the same as under grant-financed transactions.

(c) When the authorized source under a loan is Code 941, AID policy requires use of cooperating country flag air carriers, U.S. flag air carriers, or other Code 941 flag air carriers for international air travel and transportation to the extent they are available in accordance with the criteria in paragraph 2D4b below. If the supplier certifies that authorized carriers are unavailable, any Code 935 flag air carriers may be used.

b. Unavailability of Air Carriers Eligible Source

(1) Criteria for determining when U.S. flag air carriers are unavailable were established in the Comptroller General's memorandum (B-138942), dated March 31, 1981, entitled "Revised Guidelines for Implementation of the Fly America Act." It is AID's policy to use these criteria also for determining when cooperating country or Code 941 flag air carriers are unavailable. The criteria are set forth in the Federal Acquisition Regulation, Section 47.403, Handbook 14. Among other things, the memorandum provides that:

(a) Use of foreign air carrier service may be deemed necessary if a U.S. air carrier otherwise available cannot provide the foreign air transportation needed or if use of such service will not accomplish the agency's mission.

(b) U.S. air carrier service is considered available even through:

1 comparable or a different kind of service can be provided at less cost by a foreign air carrier;

2 Foreign air carrier service is preferred by or is more convenient for the agency or traveler;

3 service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies.

(2) The other criteria in the Comptroller General's memorandum related to passenger travel. The memorandum does not establish specific criteria for determining when freight service is unavailable. AID has determined that freight service by an eligible flag air carrier will be considered unavailable when:

(a) The total weight of the consignment exceeds the maximum weight per shipment which an eligible flag air carrier will accept and transport as a single shipment, and another flag air carrier will accept and transport the entire consignment as a single shipment.

(b) The dimensions (length, width, or height) of one or more of the items of a consignment exceed the limitation of the eligible flag aircraft's cargo door openings, but do not exceed the acceptable dimensions for shipment on another available flag scheduled air carrier.

(c) Use of an eligible flag air carrier would result in delivery to final destination at least 7 days later than delivery by means of another flag air carrier.

(d) No eligible flag air carrier provides scheduled air freight service from the airport serving the shipment's point of origin and another flag air carrier does.

(e) The eligible flag air carrier(s) serving the shipment's point of origin decline to issue a through airway bill for transportation to the shipment's final destination airport and another flag air carrier will.

c. Certification of Unavailability

Suppliers, contractors, or grantees who claim payment for use of a non-U.S. flag air carrier (or when Code 941 procurement is authorized under a loan, for use of air carriers other than cooperating country or Code 941 flag carriers) must certify in writing with the claim for payment that United States and other authorized flag air carriers were unavailable. The preferences for use of U.S. flag air carriers and for use of U.S., other Code 941 countries, or cooperating country flag air carriers are not subject to waiver.

5. Charters

a. Policy

AID will not finance the cost of any ocean or air charter, covering full or part cargo, where the charter has not received the prior approval of AID/Washington. Commodities are made ineligible for AID financing if shipped under any ocean or air charter which has not received prior approval of AID/Washington.

b. Procedures

Charterers contact MS/OP/TRANS, usually by telephone or telegram, and provide essential information concerning the proposed charter, including name of vessel or air carrier, flag, commodity, time of shipment, rate, and demurrage and despatch provisions. MS/OP/TRANS determines whether the proposed charter is eligible for AID financing, the rate is fair and reasonable, and the proposed charter conforms to cargo preference requirements. MS/OP/TRANS provides telephone or telegram approval of the charter, subject to subsequent receipt of a copy of the charter, signed by both parties. A copy of the approved charter is required as part of the payment documentation submitted to AID by the supplier.

c. Waivers

The policy requiring AID approval of charters cannot be waived. When there is compelling justification, MS/OP/TRANS may approve a charter after shipment.

6. General Transportation

a. Ocean freight charges may not exceed the established rate, if any, for comparable shipments on file at the Federal Maritime Commission of the United States. The price for all delivery services, including ocean freight, may not exceed the prevailing price or the price paid by the supplier under similar circumstances by other customers.

b. It is USAID's policy not to finance inland transportation beyond the point of entry in the cooperating country except when intermodal transportation services covering the carriage of cargo from point of origin to destination is used and the point of destination, as stated in the carrier's through bill of lading, is established in the carrier's tariff.

c. The general policy that USAID does not finance delivery costs beyond the point of entry in the Cooperating Country may be waived by Mission Directors or other Principal USAID Officers for activities managed in the field, or by Assistant Administrators (or their Delegees) for activities managed from USAID/Washington when this policy is clearly inconsistent with the best interests of the program or project. Among the considerations that may be cited in granting such a waiver are: an offset in the host country contribution to the project, inability of the host country entity to budget for inland freight, and enhanced security for timeliness of delivery. Care should be taken to ensure that prices paid by shippers for inland freight are equivalent to those available when these services are procured locally.

d. Dead freight and demurrage are not normally financed by USAID. See Handbook 1, Supplement B, Chapter 7 for a more complete discussion.

7. Responsibility

a. MS/OP is responsible for administering AID policies and procedures with respect to delivery services.

b. Geographic Bureaus are responsible for assuring that assistance agreements reflect AID's policies on the financing of delivery services. Particular attention should be given by the Geographic Bureaus to the policies as to the eligibility of ocean transportation services. They are alternative, depending on the specified circumstances. Failure on the part of the Geographic Bureau to apply the policies of this chapter in establishing the eligibility of transportation costs in authorizations and agreements can seriously impair the timely procurement of commodities.

Handbook 15: AID-Financed Commodities
Chapter 2: Eligibility of Commodities and Commodity-Related Services
Section 2E: Establishing Eligibility of Incidental Services

CDT: 1992/08/12
EDT: 1990/04/10

2E. Establishing Eligibility of Incidental Services

1. Policy

a. Definition

Incidental services means the installation or erection of AID-financed equipment or the training of personnel in the maintenance, operation and use of such equipment. Incidental services are, together with delivery services, considered as commodity-related services.

b. Eligibility

(1) Incidental services under both project and nonproject assistance may be financed under the same implementing document which makes funds available for the procurement of equipment if such services are specified in the purchase contract relating to the equipment. To be eligible, the price must not exceed the prevailing price, if any, for the same or similar services, or the price paid to the supplier under similar circumstances by other customers (see Section 201.68, AID Regulation 1 and paragraph 3(c) of the Project Supplier's Certificate, form 1450-4). Under non-project assistance, the portion of the total purchase contract price attributable to such services must not exceed 25 percent of the total purchase contract.

(2) USAID's nationality requirements do not apply to suppliers of incidental services, except that such suppliers must be citizens or legal residents of Code 935 countries.

(3) When incidental services are to be furnished in connection with equipment procured for a project and the cost of the services exceed 25 percent of the commodity price, consideration should be given to treating the services as a separate procurement subject to AID's usual procedures for procurement of services set forth in Chapter 12 of Handbook 1, Supp. B.

2. Waivers

a. The Regional and Central Bureaus are responsible for administering the requirements and making determinations concerning incidental services for projects in their area.

b. The Office of Procurement is responsible for administering requirements and making any necessary waivers or determinations affecting eligibility of incidental services under nonproject assistance.

Handbook 15: AID-Financed Commodities
Appendix 2A: Componentry Rulings
Section A: Imported Components Exempted from the AID Componentry Limitation When Used by U.S. Manufacturers

CDT 1992/08/12
EDT 1987/03/17

APPENDIX 2A

COMPONENTRY RULINGS

A. Imported Components Exempted from the AID Componentry Limitation When Used by U.S. Manufacturers

the For the commodities designated below, the cost of the following imported component materials is not included within the 50 percent componentry limitation when such component materials are imported into the United States for use in the manufacture of specific commodities against which they are listed.

<u>Component Materials</u>	<u>Exempted Imported Commodities</u>
1. Iron and Steel Mill Products.	1. Foreign Ores and concentrates, metallic tin, lead, nickel, and copper when used to produce iron and steel mill products.
2. Refined Cooper.	2. Foreign Copper Ores, copper concentrates, black copper, and blister copper.
3. H. T. Lead Sulfate.	3. Lead.
4. Paraffin Waxes.	4. Crude Oils.
5. Nickel Chemicals Nickel and Nickel Alloy Products Nickel or Nickel-Base Alloy Electrodes.	5. Nickel.
6. High Alumina Refractories.	6. Bauxite.
7. Motor Vehicle Parts.	7. Basic Materials (copper, tin, steel, cork, asbestos, etc.)

Handbook 15: AID-Financed Commodities
Appendix 2A: Componentry Rulings
Section B: Ruling Applicable to Commodities that are not Subject to Componentry Percentage Limitations

CDT: 1992/08/12
EDT: 1987/03/17

B. Ruling Applicable to Commodities that are Not Subject to Componentry Percentage Limitations

AID requires that the commodities listed below must be wholly manufactured within the area of source specified in the authorization document. The term "manufactured" means all processes necessary to produce the finished product. The foreign componentry percentage limitation is waived as long as the above requirement is met.

Commodities Included in "Manufacture"

- | | |
|--|---|
| <p>1. Textile Fabrics (Ruling does not apply to yarns, thread and man-made textile fibers).finished product,</p> | <p>1. All steps required in the manufacture of the including spinning, weaving, felting, knitting, and finishing, as applicable.</p> |
| <p>2. Diamond Drill Bits, Wheels and Tools normally containing industrial diamond or bortz cutting edges.</p> | <p>2. All processes necessary to produce the basic bit, wheel or tool, including the setting of industrial diamonds or bortz cutting edges.</p> |
| <p>3. Photographic and cinematographic supplies.</p> | <p>3. All steps in the manufacture of the finished product.</p> |

Handbook 15: AID-Financed Commodities
Appendix 2A: Componentry Rulings
Section C: Special Rule for Hydraulic Turbines

CDT 1992/08/12
EDT 1987/03/17

C. Special Rule for Hydraulic Turbines

Product engineering services associated with the design, testing, fabrication and installation of hydraulic turbines are relevant computable items within the componentry limitation rule. In the procurement of hydraulic turbines:

1. Bids for turbines shall be taken separately from all other equipment. Turbines shall not be bid with generators as one package. A request for a waiver of this requirement may be submitted to AID/W by the borrower/grantee (appropriate Geographic Bureau). Requests shall be in writing and shall include a detailed justification for the combined procurement.

2. The bidder shall submit (preferably with his/her bid documents) for review and approval by the borrower/grantee or his/her agent, the following information, detailing separately by source (a) U.S., (b) Code 941 exclusive of U.S., (c) cooperating country, and (d) other. This information shall be evidenced by copies of binding subcontracts or other equivalent documentation and shall include

(a) a clear description and a detailed account of all product engineering services performed or to be performed as part of the turbine sale, and

(b) an estimate, based on the total bid price for the hydraulic turbine, reflecting -

(1) The percentage of price attributable to expenditures relating to such product engineering services from other than the authorized source, and

(2) The total percentage of price attributable to the sum of all component costs from other than the authorized source. (Include material as well as engineering service componentry.)

Handbook 15: AID-Financed Commodities
Appendix 2A: Componentry Rulings
Section D: Special Rule for Chloroquine Tablets

CDT: 1992/08/12
EDT: 1987/03/17

D. Special Rule for Chloroquine Tablets

The foreign componentry limitation is raised from 50 percent to 60 percent for chloroquine tablets.

Handbook 15: AID-Financed Commodities
Appendix 2A: Componentry Rulings
Section E: Special Rule for Propoxur Pesticide

CDT 1992/08/12
EDT 1987/03/17

E. Special Rule for Propoxur Pesticide

The foreign componentry limitation is raised from 50 percent to 60 percent for propoxur pesticide.

Handbook 15: AID-Financed Commodities
Appendix 2B: Procurement Source Waiver Sample

CDT: 1992/08/12
EDT: 1987/03/17

APPENDIX 2B

FORMAT AND SAMPLE

PROCUREMENT SOURCE WAIVER

DRAFTED: _____

INITIALED: _____

WAIVER CONTROL NO. _____

ACTION MEMORANDUM FOR THE ASSISTANT ADMINISTRATOR FOR AFRICA

FROM :

Problem: Request for Procurement source waiver from Geographic Code 000 (U.S. only), to Geographic Code 899 (Free World).

- (a) Cooperating Country: Zaire
- (b) Authorizing Document: Loan 660-L-000
- (c) Project: Community Development
- (d) Nature of Funding: Development Loan [X], other []
- (e) Description of Goods: Pegson and Johnson gasoline-powered hand compactors
- (f) Approximate Value: \$150,000
- (g) Probable Source: United Kingdom
- (h) Source Waivers Granted for Commodity Procurement:

Discussion: USAID/Zaire has stated that the above equipment is an "important part of machinery procurement for the above project." The Mission having consulted with M/SER/OP advised that there are no comparable American hand compactors. The British-made Pegson and Johnson super rammer is widely used in the cooperating country, has simple design and a minimum of moving parts. Additionally, private dealers in the cooperating country can provide spare parts and service facilities for the British-manufactured equipment.

Primary Justification: The subject equipment is essential to this AID-financed project, is not available from the authorized source, and non-AID, foreign exchange is not available for the purpose. Under these circumstances, the waiver is justified under the criteria set forth in Handbook 1, Supp. B, Chapter 5B4a(2). Waivers for individual transactions may be authorized by the Assistant Administrator if the total value of the procurement does not exceed \$5 million.

Recommendation: For the above reasons, I conclude that **exclusion of procurement from the sources requested above, would seriously impede attainment of U.S. foreign policy objectives and the objectives of the foreign assistance program, and I recommend that you certify by approving this request for waiver.

=====

** NOTE: The determination evidence by the phrase "exclusion of... assistance program" is required when waiver is to Code 899. The determination required with waivers to other codes is: "procurement from the sources requested above is necessary to the attainment of U.S. foreign policy objectives or objectives of the foreign assistance program...".

=====

APPROVED:

DISAPPROVED:

DATE:

Attachments:

Clearances:

Handbook 15: AID-Financed Commodities
Appendix 2C: Form AID 11, Application for Approval of Commodity Eligibility
CDT: 1992/08/12
EDT: 1990/06/01

APPENDIX 2C

Form AID 11, APPLICATION FOR APPROVAL OF COMMODITY ELIGIBILITY

[AVAILABLE AS AN IMAGE]

<IMAG>

AID 11 (6/90)	@1502Ap2C.001
AID 11 (6/90)	@1502Ap2C.002
AID 11 (6/90)	@1502Ap2C.003
AID 11 (6/90)	@1502Ap2C.004

Handbook 15: AID-Financed Commodities
Appendix 2D: Forms AID 282 and AID 1450-4, Invoice-and-Contract Abstract and Supplier's Certificate
Section: Attachment 1: Form AID 282, Invoice-and-Contract Abstract

CDT: 1992/08/12
EDT: 1990/05/01

APPENDIX 2D

Form AID 282, INVOICE AND CONTRACT ABSTRACT

[AVAILABLE AS AN IMAGE]

<IMAG>

AID 282 (5/90)	@15Ap2D01.001
AID 282 (5/90)	@15Ap2D01.002
AID 282 (5/90)	@15Ap2D01.003
AID 282 (5/90)	@15Ap2D01.004

Handbook 15: AID-Financed Commodities

Appendix 2D: Forms AID 282 and AID 1450-4, Invoice-and-Contract Abstract and Supplier's Certificate

Section: Attachment 2: Form AID 1450-4, Supplier's Certificate and Agreement

CDT: 1992/08/12

EDT: 1990/09/01

Form AID 1450-4, Supplier's Certificate and Agreement

[AVAILABLE AS AN IMAGE]

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AID 1450-4 (9/90)

@15Ap2D02.001 |

AID 1450-4 (9/90)

@15Ap2D02.002 |

AID 1450-4 (9/90)

@15Ap2D02.003 |

AID 1450-4 (9/90)

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