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September 27, 1999

MEMORANDUM

TO: Director, USAID/Philippines, Patricia K. Buckles

FROM: RIG/Manila, Paul E. Armstrong

SUBJECT: Audit of USAID/Philippines' Response to Customs Duties Levied on Donated Contraceptives, Audit Report No. 5-492-99-006-P

This is our report on the subject audit. We reviewed your comments to the draft report and included them in their entirety as Appendix II. We have also included a copy of your Management Representation Letter as Appendix III. The report contains one recommendation (see page 2). Based on the Mission's comments, a management decision has been reached on that recommendation.

I appreciate the cooperation and courtesies extended to my staff during the audit.

Background

For many years, USAID has been donating contraceptives to the Government of the Philippines' (GOP) Department of Health (DOH).[1] For most of those years, the custom duties applicable to those contraceptives had essentially been handled as bookkeeping entries, referred to as automatic/incremental budget allocations, between GOP agencies. However, in December 1997, the President of the Philippines issued Administrative Order No. 372 (Order 372) which, as implemented by the Department of Budget and Management in January 1998, required that customs duties and taxes on imported items—including donated commodities—be financed by National Government Agencies out of their existing budgets.

Subsequently, in February 1998, the DOH, which was covered by Order 372, requested that USAID suspend its shipment of donated contraceptives because the DOH did not have funds available to pay the required duties. Three months later, in May 1998, the DOH requested that, as a stopgap measure, USAID consign future contraceptive

[1] The subject of family planning and the use of contraceptives are controversial issues in the Philippines. The Philippine government, and religious leaders and their followers frequently disagree on using such methods.

shipments to the United Nations Population Fund (UNFPA) thereby taking advantage of UNFPA's ability to import goods on a duty free basis. USAID/Philippines agreed to this arrangement—which worked from May 1998 until April 1999. However, in April 1999, the Philippines Bureau of Customs challenged this arrangement and held several shipments of USAID-donated contraceptives. The Philippine Government's Department of Finance and Department of Health worked out yet another stopgap measure that achieved the release of the held, and reportedly future, contraceptive shipments.

We began our audit in June 1999 and issued a Report of Audit Finding (RAF) to the Mission in July 1999 stating our concern over the resumption of contraceptive shipments. USAID/Philippines responded in July, stating that—in their opinion—this new arrangement was permanent and that they were comfortable with resuming the shipment of contraceptives.

Audit Objective

The Office of the Regional Inspector General, Manila (RIG/Manila), audited USAID/Philippines to answer the following audit objective:

- How did USAID/Philippines address custom duties levied on USAID-donated contraceptives?

Audit Finding

USAID/Philippines' acquiescence and participation in the arrangement between the DOH and the UNFPA permitted the DOH to use the UNFPA name as a consignee and avoid paying customs duties on USAID-donated contraceptives. The payment of such duties from the DOH's current budget was required under the GOP Department of Budget and Management's January 1998 memorandum to the Bureau of Customs. This arrangement, which, in our opinion, circumvented the intent of the Presidential Order, fell apart when challenged by the Bureau of Customs. We believe the overall issue of levying duties on USAID-donated commodities should have been, and still needs to be, addressed directly with the Government of the Philippines.

> **<u>Recommendation No. 1</u>: We recommend that USAID/Philippines develop, with the Philippines' Department of Foreign Affairs and/or the National Economic Development Authority, an action plan—with targets and milestones—to eliminate the requirement that customs duties be paid on USAID-donated commodities.**

USAID policy[2] notes that both USAID and its predecessor agencies have long held that the United States, as a donor of assistance, should not have to pay tax or duty on that

[2] A.I.D. Policy on Local Taxation of Loan-Funded Contractors, their Personnel and Equipment.

assistance to the donee. It further states that "[t]his principle is supported by the need to conserve USAID appropriations, and by the feeling expressed in the proverbial injunction that you should not bite the hand that feeds you." While this policy does not proscribe the payment of duties by host country counterparts, we believe that payments made from the current budgets of those counterparts to cover duties levied on USAID assistance would divert funds that could otherwise be used to further USAID and host government development objectives.

This belief was echoed in a March 1998 letter that the Secretary of Health sent to the President of the Philippines, seeking relief from the payment of duties on donated commodities. The Secretary of Health noted that the imported commodities now subject to duty payments were mainly subsidized by foreign donors and, for the most part, benefited poor, marginalized and underserved Filipinos. The Secretary also noted that the DOH did not have the funds necessary to pay the required customs duties and, as a result, hard-earned gains made by the DOH could readily be reversed, if not worsened.

Unfortunately, the President did not provide the requested relief from custom duties. So in March 1998, the DOH and USAID/Philippines started searching for ways to deal with the situation. Subsequently, in late May 1998, the DOH requested that, as a temporary measure, USAID/Philippines consign future contraceptive shipments to the UNFPA, thereby taking advantage of the UNFPA's ability to receive and clear donated goods free of customs and duties.[3] This consignment arrangement allowed USAID-donated contraceptives to pass through Philippine customs without the payment of duties.

However, at the end of April 1999, the UNFPA received a letter from the Bureau of Customs stating that two containers of contraceptives were currently at the port in Manila. This letter also noted that the Customs Bureau had "been informed that some unscrupulous elements have been using your firm [UNFPA] as conduit in their illegal trade." It further requested that the UNFPA confirm in writing whether it had imported the contraceptives. Shortly thereafter, the UNFPA County Representative sent USAID/Philippines a letter (see Appendix IV) stating that it had "... been instructed [by UNFPA headquarters] to inform USAID to withdraw immediately from the practice of allowing the use of the UNFPA name to import contraceptives, thus avoiding payment of taxes."[4]

In reaction to UNFPA's withdrawal as consignee, USAID quickly halted further

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[3] We were unable to determine the evolution of this arrangement, because while USAID supplied us ample documentation evidencing the events prior to March 28 and after May 26, 1998, there were no documents made available to explain what role USAID played in the design of this arrangement.

[4] These instructions and the Customs Bureau's reference to "unscrupulous elements" are particularly ironic given the fact that earlier, in August 1998, the UNFPA had refused to become the consignee for non-USAID donated equipment and DOH-owned products stating that "[w]e are particularly careful that the tax exemption privileges of UNFPA are not perceived as an instrument for circumventing government tax rules and regulations."

contraceptive shipments. Unfortunately, by the time these shipments were halted, three shipments of contraceptives with a total value of almost $979,000 were already on the high seas and, subsequently, were held at the Manila port where they were at substantial risk of spoilage and/or diversion.

To address this situation, the Secretary of Health sent the Secretary of Finance a June 12, 1999 letter requesting resolution of the problem and stating that:

- The payment of duties from its existing budget would consume meager resources for life-saving disease control programs such as tuberculosis, dengue and malaria; and

- The Bureau of Customs had the option of holding succeeding contraceptive shipments if the DOH's back accounts were not settled under a deferred payment scheme.

In turn, the Secretary of Finance sent a letter to the Commissioner of the Bureau of Customs. This letter noted that the DOH could take advantage of the above mentioned deferred payment scheme and authorized the Bureau to release the contraceptive shipments pending the issuance of a joint order or circular. In response, the Commissioner agreed to release contraceptive shipments pending the issuance of such an order or circular. So, the immediate problem has been resolved.

Lessons Learned

We have the following concerns with how this situation unfolded, some of which may have implications beyond the current situation and this particular host government.

1. **The silence of USAID's bilateral agreement regarding custom duties –** Although USAID's bilateral assistance agreement with the Government of the Philippines, which was executed in 1951, does address many important issues—such as the provision and use of trust funds—it does not explicitly state that USAID-donated commodities will be free from taxes and duties. While the bilateral agreement with the Philippines is not unique in this regard, other bilateral agreements of this era do contain such exemptions.

   For example, USAID's bilateral agreement with Jordan, which was executed in 1957, states that commodities imported in connection with a USAID program or project will be exempt from any customs duties, import and export taxes, and other taxes. While such language does not guarantee that the host country will not attempt to levy customs duties on USAID-donated commodities, it does provide an authoritative basis for contesting such duties.

2. **The acceptance of short term solutions for long term problems -** In May 1998, the Mission's identification of the UNFPA as its consignee for contraceptive shipments was viewed as a stopgap measure pending a

permanent solution to the problem. This permanent solution was the supposed granting of a waiver by either the President and/or the Department of Finance—neither of which were forthcoming.

Now, in July 1999, the Mission has once again fastened on a stopgap measure pending a permanent solution—the issuance of a GOP joint order or circular—which, like the waiver mentioned above, might never be issued.

3. **The focus on donated contraceptives rather on donated commodities –** While the current case does involve shipments of contraceptives, the issue of applying customs duties to donated commodities has the potential to impact any current or future USAID activity/program that involves such commodities. While we appreciate that the Mission's and the DOH's primary concern was to resume the flow of donated contraceptives, we think the Mission must deal with the larger issue of USAID-donated commodities.

4. **Significant political risks were associated with using the UNFPA as a consignee -** The acquiescence of USAID in the use of the UNFPA had the potential for negatively affecting the program. While we do not question the sincerity of the parties involved in bringing about the arrangement by which the UNFPA agreed to act as a "paper" consignee[5] for the commodities; without additional USAID documentation discussing this arrangement, it is not clear what elements of the situation were considered.

   For example, substantial sectors of Philippine society and government do not approve of the use, to say nothing of the importation, of contraceptives. Consequently, even though the UNFPA—by virtue of its status as part of an international organization—is not required to pay custom's duties, it assisted a member state (the United States) to import commodities in apparent violation of a Philippine Presidential Directive. We believe that such a maneuver could have caused a public backlash endangering what legitimacy and limited governmental support the program does enjoy.

5. **Other significant risks were associated with using the UNFPA as a consignee -** One possible consequence of making the UNFPA the consignee of record, when in fact it was not actually ever in possession of the commodities, is that—in the event some shipments were diverted—such a consignment could blur the question of who was responsible for the commodities. We believe that the risk of commodity diversion from the Port area of Manila is quite high; as evidenced by the considerable traffic in

[5] We call UNFPA a "paper" consignee because while the UNFPA signed all of the customs forms certifying as to the conditions of importing the contraceptives into the country, the commodities were never delivered to, or at any time in the possession of the UNFPA. Once the U.N. representative signed the customs' declarations, those declarations were used to release the commodities directly to a USAID clearing agent. The agent reportedly took the goods to a warehouse, from where they were delivered to the Department of Health facilities. At no time did the UNFPA receive or monitor delivery of the commodities.

imported commodities which takes place in stores adjacent to the port area.

In fact, the objections of the Bureau of Customs to the UNFPA role came about as the result of an allegation that commodities were being diverted. While that allegation is now under investigation by the Customs Bureau, a potential for diversion exists. It is possible that in a situation where goods are consigned to one party and delivered to another, a subsequent claim for restitution of missing commodities would automatically present a chain-of-custody problem. While the Department of Health did stipulate in its letter to the USAID/Philippines that it would be responsible for any losses, it must be remembered that this is a Department which did not have funds for payment of duties, and that any recovery for stolen commodities would be problematic. In the absence of any prior written documentation regarding this arrangement from the donor of the commodities, USAID, it is unlikely that a claim could be successfully carried out in the legal system. According to USAID/Philippines' officials, 15 shipments consigned to the UNFPA passed through the port without any undue diversion.

To address these concerns, we have recommended that USAID/Philippines develop, with the Philippines' Department of Foreign Affairs and/or the National Economic Development Authority, an action plan—with targets and milestones—to eliminate the requirement that customs duties be paid on USAID-donated commodities.

Management Comments and Our Evaluation

In response to the draft audit report, USAID/Philippines' management stated that it was in general agreement with the content of the report and agreed to take the recommended action. Regarding Recommendation No. 1, the Mission agreed to develop an action plan—with targets and milestones—to eliminate the requirement that customs duties be paid on USAID-donated commodities. The Mission intends to involve the Department of Foreign Affairs and/or the National Economic and Development Authority in this action plan.

Based on the above, USAID/Philippines has made a management decision on the one audit recommendation in this report. We appreciate the Mission's offer to submit the final action plan to us before requesting closure of the recommendation from the Bureau for Management's Office of Management Planning and Innovation.

APPENDIX I

SCOPE AND METHODOLOGY

We performed an audit of how USAID/Philippines addressed custom duties levied on USAID-donated contraceptives. The audit was performed in accordance with generally accepted government auditing standards and was conducted from June 28 through September 2, 1999 at USAID/Philippines. This audit was limited to examining:

- The circumstances that led to the Government of the Philippines' requirement that custom duties be paid on USAID-donated commodities;
- The reaction of USAID, its host country counterparts and its development partners to this requirement;
- The status of commodity shipments affected by this arrangement; and
- The current situation vis-à-vis custom duties on USAID-donated contraceptives and other commodities.

This audit was designed to look at the particular issue of custom duties on USAID-donated contraceptives and, therefore, did not include a review of the overall contraceptive distribution system.

Our audit work included analyzing USAID, United Nations Population Fund (UNFPA), and host government documents to determine how the requirement for paying custom duties originated and how USAID and its partners responded. We also interviewed USAID, UNFPA, and host government officials to learn more about how the situation evolved. Finally, we made a field visit to the Manila port to examine the contraceptives being held by the Bureau of Customs and the conditions under which those commodities were being held.

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23 SEP 1999
RIG/A

MEMORANDUM

To: Mr. Paul E. Armstrong
RIG/A/Manila

From: Patricia K. Buckles
Mission Director

Subject: Quick Response Audit of USAID/Philippines' Response to Customs Duties Levied on Donated Contraceptives, Audit Report No. 5-492-99-006-P

The Mission agrees with your recommendation to develop, with the Philippines' Department of Foreign Affairs and/or the National Economic and Development Authority, an action plan with targets and milestones to eliminate the requirement that customs duties be paid on USAID donated commodities. At the same time, we believe the following comments are pertinent to fully understanding this complex situation, and present these below.

For more than 25 years, USAID donated contraceptives and other commodities entered the Philippines without paying custom duties. However, as you point out, this arrangement was in jeopardy when the GOP issued a Presidential Order in December 1997 requiring duties to be collected by the Bureau of Customs (BOC) on all items entering the country, including donated materials, as a part of the GOP's overall tax reform effort. As a result of this Presidential Order, six shipments of USAID funded contraceptives totaling $1.74 million were held by the BOC until the payment of duties by GOP's Department of Health (DOH). By holding these commodities at the port, the available supply of essential contraceptives in the Philippines was jeopardized. This would have had an adverse impact on our program objectives - a reduction in fertility and an improvement in the health status of mothers and children. Additional delay would have also exposed these commodities to loss due to heat and humidity.

Given the lack of GOP resources and the need to release all contraceptive shipments immediately to avoid spoilage, the

DOH decided that all future shipments should be consigned to the United Nations Population Fund (UNFPA). The attached letter by the DOH (Attachment I) requested that USAID have "contraceptive shipments intended for the Department of Health be consigned to the UNFPA". Even with the UNFPA as the consignee, the Bureau of Customs also received a written exemption from taxes and duties for these commodities from both the Department of Foreign Affairs and the Department of Finance. Because USAID is the only donor for public-sector contraceptives in the Philippines, large numbers of women, and particularly poor women, could have had unwanted children, if the Department of Health had not come up with a quick solution, i.e. changed consignees.

The Mission was aware of the potential risks identified in the audit report of using UNFPA as the consignee. However, we believe our only feasible option was to implement the GOP's official request to consign the contraceptives to the UNFPA in order to sustain our program and avoid the loss of commodities due to spoilage. It should be noted that fortunately none of these risks came to pass in using this arrangement.

In order to reduce the risk of loss and diversion, USAID/W/Global Bureau shipped the commodities "door to door," making the U.S. shipping agent, PANALPINA, responsible for all losses until the shipments arrive at the Department of Health warehouse. The results were successful. All 15 shipments of contraceptives for the DOH consigned to the UNFPA passed through the port with no reported diversion.

The letter from the Bureau of Customs mentioned in the audit report states "that they (BOC) have been informed that unscrupulous elements have been using your (UNFPA) firm ...". In this letter (Attachment II), the Bureau of Customs did not indicate USAID commodities were involved, but referred to those contraceptives consigned to UNFPA that arrived on board the vessel "Eagle Excellence", Registry No. APL-074 on 4/29/99. The shipping records for all USAID commodities during this period show that we did not use this vessel to transport our contraceptives.

The current arrangement with the GOP requires USAID commodities to be funded through the automatic appropriation mechanism as done prior to the issuance of the Presidential

Notice. This mechanism has worked effectively in clearing 6 shipments without USAID and the GOP paying duties from their budgeted resources for development activities and any losses due to diversion. However, we do agree with the RIG in implementing the following recommendation to develop an action plan for all USAID-donated commodities:

> Recommendation No. 1: We recommend that USAID/Philippines develop, with the Philippines' Department of Foreign Affairs and/or the National Economic and Development Authority, an action plan - with targets and milestones - to eliminate the requirement that customs duties be paid on USAID-donated commodities.

The Mission agrees to develop an action plan - with targets and milestones - to eliminate the requirement that customs duties be paid on USAID-donated commodities. This plan will include the involvement and participation of GOP Department of Foreign Affairs and/or the National Economic and Development Authority to address this situation. Based on the above, the Mission requests that a management decision be issued in the final report and that this recommendation be closed upon issuance of an action plan to address this issue. The Mission will submit the final action plan to RIG before requesting closure of this recommendation.

Thank you for your coordination with the Mission on this effort.

Attachments: Attachment I & II

Republic of the Philippines
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY

May 27, 1998

Dr. Carol Carpenter-Yaman
Chief, OPHN
USAID, Manila

Subject : Contraceptive Shipments

Dear Dr. Carpenter-Yaman:

In view of the recent change in customs clearance procedures and consequent delays experienced by the Department of Health in clearing USAID-donated contraceptives for the Philippine Family Planning Program, the Hon. Secretary of Health has taken up the matter at the highest levels of the government for a permanent solution to the problem created by the new Customs Directive. Pending a final decision on this issue, the Department of Health hereby requests that all future contraceptive shipments intended for the Department of Health be consigned to the UNFPA addressed as follows:

Mr. SATISH MEHRA
Country Representative
UNFPA
NEDA sa Makati
Amorsolo St., Legaspi Village
Makati City

The Secretary has already discussed this matter with Mr. Satish Mehra, UNFPA Country Representative, who has kindly agreed to clear the shipments on behalf of the Department of Health through established UN procedures. To facilitate UNFPA clearance and delivery to our central warehouse, however, it would be most helpful if the shipments could be sent door-to-door in accordance with a copy of recent communication from Mark Rilling of USAID/Washington provided to CDLMIS.

Please be advised that this changes in the consignee is requested by the Department of Health to avoid protracted delays in customs clearance and potential damages to USAID funded contraceptives from exposure to sun and storage conditions at the port.

The Department of Health will be solely responsible and accountable for all shipments made to

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SEP 1 0 1999

Mr. Paul E. Armstrong
Regional Inspector General for Audit/Manila
U.S. Agency for International Development
1680 Roxas Blvd., Manila, Philippines

Subject: Quick Response Audit of USAID/Philippines' Response to Customs Duties Levied on Donated Contraceptives, Audit Report No. 5-492-99-00X-P

Dear Mr. Armstrong:

You have asked that USAID/Philippines provide a Management Representation Letter in connection with your quick response audit of the Customs Clearance of USAID-Donated Contraceptives as of September 2, 1999 and for the period January 1, 1998 to August 30, 1999, the period under audit. The audit was intended to answer the following audit objective:

- How did USAID/Philippines address custom duties levied on USAID-donated contraceptives?

I have asked the offices most concerned with the audit to make available to your staff all records in our possession for the purpose of the audit. They have assured me that all records in our possession have been made available.

I have also asked them to make representations to me about the activities audited and the audit itself. They have made the representations below as they apply only to those aspects of the audited activities which have been under the full implementation and administrative control of USAID/Philippines.

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13 SEP 1999
RIG/MANILA

Mr. Paul E. Armstrong Page 2

Based upon the representations made to me by my staff and their concurrence with the representations made herein, I confirm the following representations with respect to the activities audited:

1. USAID/Philippines is responsible for: (a) the Mission's internal control system; (b) the Mission's compliance with applicable U.S. laws and regulations, strategic agreements, and contracts; and (c) the fairness and accuracy of the Mission's accounting and management information systems relating thereto.

2. To the best of my knowledge and belief, USAID/Philippines has made available to RIG/A/Manila auditors all Mission records relating to the activities audited, including all communications to third parties.

3. To the best of my knowledge and belief, Mission records relating to the activities audited are accurate and complete and give a fair representation as to the status of the activities audited.

4. To the best of my knowledge and belief, USAID/Philippines is not aware of any material instances where financial or management information which we consider substantive on matters directly relating to this audit has not been properly and accurately recorded and reported, other than the findings in the draft report.

5. To the best of my knowledge and belief, USAID/Philippines has disclosed any known irregularities, which we consider substantive, involving Mission employees with internal control responsibilities or other organizations that could affect the customs clearance of USAID-donated contraceptives, nor communications from any other organization concerning noncompliance with or deficiencies in the customs clearance of USAID-donated contraceptives that we have not already provided to you. For purposes of this representation, "irregularities" means the internal noncompliance with applicable laws or regulations and/or intentional misstatements, omissions or failures to disclose irregularities.

Mr. Paul E. Armstrong Page 3

6. To the best of my knowledge and belief, USAID/Philippines has reported to the auditors all known instances (other than what has been included in the draft audit report or reported by the Mission during the course of the audit) in which, in the Mission's judgment, there has been a material noncompliance with USAID policies and procedures, violations or possible violations of U.S. laws or regulation relating to the activities audited.

7. To the best of my knowledge and belief, USAID/Philippines has reported to the auditors all known instances (other than what has been included in the draft audit report or reported by the Mission during the course of the audit) in which, in the Mission's judgement, there has been a material noncompliance with all the aspects of contractual agreements relating to the activities audited.

8. After reviewing your draft audit report and further consultation with my staff, I know of no other facts as of the date of this letter (other than those expressed in our Management Comments to the draft report) which, to the best of my knowledge and belief, would materially alter the conclusions reached in the draft report.

I request that this Representation Letter be included as part of the official management comments on the draft report and that it be published herewith as an Annex to the report.

Sincerely,

Patricia K. Buckles
Mission Director
USAID/Philippines

Appendix IV

28/06 '99 MON 15:56 FAX 00632 8178616 UNFPA 001

United Nations Population Fund

NEDA sa Makati Building, 106 Amorsolo Street,
Legaspi Village, 1229 Makati City
Tel. No.: 892-0611 TO 25 • Telex: Philcom 72222250
E-mail : unfpa @ pworld.net.ph
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undp.fo.phi @ cgnet.com (internet)
Fax No.: (632) 817-8616

Jun 2 7 13 AM '99

PHI/GEN - 694

28 June 1999

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JUN 29 1999
OPHN

Dear Bala,

I am writing to you in response to Mr. Charles Lerman's letter dated 3 June 1999 concerning the shipment of contraceptives and wish to reiterate that as per instruction from UNFPA Headquarters and following discussions with the legal office, I have been instructed to inform USAID to withdraw immediately from the practice of allowing the use of UNFPA name to import contraceptives thus avoiding payment of taxes.

Please note that in light of the above directives, and as stated in our letter dated 17 May 1999 which supersedes all previous correspondence on the same subject, UNFPA, now or in the future, is not in a position to be of any assistance in releasing any goods, consigned to us.

We hope you understand our inability to extend support on this matter and wish USAID all the best to explore other options to resolve the problem.

Best regards.

Sincerely yours,

Satish Mehra
Representative

Dr. P.E. Balakrishnan
Office of Population, Health and Nutrition
USAID/Manila