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REPORT TO THE CONGRESS

Policies Covering The Collection Of Dollar Claims From The Government Of Vietnam B-159451

**Agency For International Development
Department of State**

***BY THE COMPTROLLER GENERAL
OF THE UNITED STATES***

DEC. 3. 1969



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B -159451

To the President of the Senate and the
Speaker of the House of Representatives

This report presents the results of our review of the policies covering the collection of dollar claims from the Government of Vietnam by the Agency for International Development. Our review was made in response to a request by the Chairman, Foreign Operations and Government Information Subcommittee, Committee on Government Operations, House of Representatives, and pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Bureau of the Budget; the Secretary of State; and the Administrator, Agency for International Development.

James B. Stacks

Comptroller General
of the United States

D I G E S T

WHY THE REVIEW WAS MADE

The Chairman, Foreign Operations and Government Information Subcommittee, Committee on Government Operations, House of Representatives, requested the General Accounting Office (GAO) to review the effectiveness of

- Policies of the Agency for International Development (AID) for collecting refund claims from the Government of Vietnam (GVN) and
- AID's efforts to establish an escrow account from which reimbursement for refund claims could be obtained automatically, as recommended by the Committee and in section 403 of the Foreign Assistance Act of 1967.

AID, under its programs, has established the right to file claims against recipients for refunds for irregularities, in order to encourage more effective utilization of AID's assistance.

FINDINGS AND CONCLUSIONS

After only limited efforts to establish an escrow account, AID, together with the GVN, established a Joint Task Force in an effort to settle the large balance of long outstanding claims filed against the GVN. Although this alternative was successful in collecting most of the claims that had been outstanding for excessive periods of time as of June 1967 when the Task Force was formed, the problems that led to the proposal to establish the escrow account still exist. Collection of claims continues to require excessive periods of time and compromise settlements which do not encourage adherence to AID regulations. (See pp. 8 to 20.)

In April and May 1969, the GVN paid \$1.6 million in claims, but these payments were not due to the efforts of the Joint Task Force. AID obtained the payment on the basis of its consideration not to file additional claims of \$3.4 million based on violations of AID regulations governing the source country of the goods financed by AID. Payment of the \$1.6 million reduced the balance of unpaid claims substantially, and AID advised GAO that the balance was to be paid shortly. (See pp. 12 to 14.)

The Joint Task Force approach to collecting claims has not solved the existing problems. GAO believes that the escrow account method of collecting claims would provide a more streamlined procedure for disposing of refund claims and that it should contribute materially to more effective use of assistance in Vietnam. (See pp. 19 and 20.)

AID's tolerant policy regarding the filing of claims for AID-financed commodities remaining in the Saigon Port as distressed cargo, and in Vietnamese bank and importer warehouses pledged as collateral on loans, contributed materially to the prolonged nonutilization of these commodities in the Vietnamese economy. Claims for the cost of the commodities either had not been filed or had been billed only after considerable delay. (See pp. 21 to 34.)

AID had difficulty in establishing whether the GVN was responsible for irregularities discovered under Public Law 480 and project assistance. As a result, its right to file claims for such irregularities was not established. (See pp. 34 and 35.)

RECOMMENDATIONS OR SUGGESTIONS

GAO believes that AID should (1) establish an effective method of collecting claims and (2) fully exercise its right to file claims. Improved claims procedure could result in more effective utilization of United States assistance

GAO suggested that:

- AID obtain agreement with the GVN to establish an escrow account from which claims would be automatically collected.
- AID file claims for the cost of U.S. commodities which have been in Vietnam for excessive periods of time without entering the economy.
- AID establish a reasonable time period for AID-financed commodities to be moved into the economy; also, that AID adopt a firm position that claims for refunds be submitted when the time limit is exceeded.
- AID devote greater effort in its internal reviews of Public Law 480 and project assistance, to determine the party responsible for irregularities, and file claims if appropriate.

AGENCY ACTIONS AND UNRESOLVED ISSUES

AID replied that:

- It was not desirable to request the GVN to establish an escrow account. Use of the Joint Task Force had been a very satisfactory vehicle for collecting claims and should be continued.

--AID had pursued the problems of distressed cargoes and pledged commodities in a reasonable manner.

--AID's policy had been, and would continue to be, to file claims for project assistance and Public Law 480 commodity irregularities only where satisfactory evidence existed to prove the loss and to identify the responsible party.

AID and the GVN have taken certain actions which in GAO's opinion should result in more effective utilization of AID-financed commodity assistance and in improved policies and procedures for filing refund claims. (See pp. 31 to 33 and 35.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

GAO is reporting these matters to the Congress because of its concern with U.S. activities in Vietnam. The Congress may wish to consider whether further guidance should be given to AID concerning the establishment of an escrow account, in view of the significant period of time that has elapsed during which no effective action has been taken by AID.

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ABBREVIATIONS

ADCCA	Associate Director for Commercial and Capital Assistance
AID	Agency for International Development
CIP	Commodity Import Program
GAO	General Accounting Office
GVN	Government of Vietnam
IIS	Inspections and Investigations Staff (AID)
NBVN	National Bank of Vietnam
RVN	Republic of Vietnam
USAID	United States Agency for International Development, Vietnam

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After only limited efforts to establish an escrow account, AID, together with the GVN, established a Joint Task Force in an effort to settle the large balance of long outstanding claims filed against the GVN. Although this alternative was successful in collecting most of the claims that had been outstanding for excessive periods of time as of June 1967 when the Task Force was formed, the problems that led to the proposal to establish the escrow account still exist. Collection of claims continues to require excessive periods of time and compromise settlements which do not encourage adherence to AID regulations. (See pp. 8 to 20.)

In April and May 1969, the GVN paid \$1.6 million in claims, but these payments were not due to the efforts of the Joint Task Force. AID obtained the payment on the basis of its consideration not to file additional claims of \$3.4 million based on violations of AID regulations governing the source country of the goods financed by AID. Payment of the \$1.6 million reduced the balance of unpaid claims substantially, and AID advised GAO that the balance was to be paid shortly. (See pp. 12 to 14.)

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GAO is reporting these matters to the Congress because of its concern with U.S. activities in Vietnam. The Congress may wish to consider whether further guidance should be given to AID concerning the establishment of an escrow account, in view of the significant period of time that has elapsed during which no effective action has been taken by AID.

CHAPTER 1

INTRODUCTION

The General Accounting Office has made a review of the policies and procedures followed by the Agency for International Development in the billing and collection of U.S. dollar refund claims against the Government of Vietnam. Our review was undertaken in response to a request by the Chairman of the Foreign Operations and Government Information Subcommittee of the Committee on Government Operations, House of Representatives. In accordance with an agreement reached with the Subcommittee staff, this report is being made to the Congress.

The scope of our review is described on page 36 of this report. A list of the principal officials responsible for administration of the activities discussed in this report is included in appendix II.

On February 26, 1969, we submitted our report draft to AID for comment. AID's comments, which are set forth in a letter dated June 3, 1969, are presented as appendix I and are discussed in the body of the report, where appropriate.

The United States, from fiscal year 1954 through fiscal year 1968, expended a total of \$3,476.2 million in economic assistance to Vietnam under the following programs:

<u>Program</u>	<u>Amount</u> <u>(millions)</u>
Commercial Import Program	\$1,938.2
Pacification Program	265.1
Public Law 480 and similar agricultural programs	772.6
Project assistance program	474.6
Other programs	<u>25.7</u>
	<u>\$3,476.2</u>

These programs provided consumer goods and raw materials for the commercial sector of the economy in the

Republic of Vietnam (RVN) and commodity and technical assistance to the GVN in such areas as agriculture, health, public works, safety, education, refugee relief, public administration, and industrial development.

Responsibility for ensuring proper utilization of such assistance is placed on the GVN. For example, article II of the Economic Cooperation Agreement between the United States and the GVN, dated September 7, 1951, as amended, reads in part:

"In order to assure maximum benefits to the people of Vietnam from the assistance to be furnished under the present Agreement by the Government of the United States of America, the Government of Vietnam will use its best endeavors:

"A. To assure efficient and practical use of all resources available and to assure that the commodities and services obtained under this Agreement are used for purposes consistent therewith and with the general objectives indicated in the aid program presented by the Government of Vietnam and agreed to by the Government of the United States of America."

To ensure that U.S. assistance achieves maximum effectiveness and is utilized in accordance with AID's overall objective, AID has established various regulations and procedures to provide for effective use of economic assistance furnished to recipient countries. These regulations provide that, where it is determined by AID that an AID-financed transaction is in violation of these regulations, or that commodities have been misused, the cooperating country may be required to refund to the United States the amount AID determines is attributable to such violation or misuse.

Refunds thus shift the financing of imported commodities with foreign exchange provided by the United States (about 45 percent of the total) to the foreign exchange accruing to Vietnam as the result of purchases of goods and services by the U.S. military forces in Vietnam, which provide

about 45 percent of the Vietnamese foreign exchange requirements, and to the Vietnamese foreign exchange earnings from the sale of exports, which provide about 10 percent of the Vietnamese foreign exchange requirements.

AID claims refunds from recipient countries because of (1) deficiencies in purchasing (such as procurement of ineligible commodities and inadequate solicitation of offers), (2) transactions ineligible, by statute or regulations, for AID financing (such as transportation costs in excess of the 50/50 limitation on freight on a non-U.S.-flag carrier), (3) deficiencies in the utilization of the commodities by the recipient country and in accounting for their receipt and distribution, and (4) ineligible sales agent commissions.

From July 1, 1965, through March 31, 1969, dollar claims totaling \$10.2 million were issued to the GVN by AID.

Funds which become available as the result of the payment of claims from recipient countries to AID may be used to finance AID's Operational Year Budget.¹ They are, however, subject to the same justification and approval process as are revisions of the AID program. Thus the use of such funds is subject to AID's planning and programming process.

Moreover, since money becoming available from refunds usually has been made available under a prior year appropriation, its reuse is subject to a provision of the Foreign Assistance and Related Agencies Appropriation Act of 1963 and thereafter. This provision prohibits the reobligation of prior year funds except for projects which have been presented to the Congress and only after notification of such intended reobligation is furnished to the Congress.

¹The Operational Year Budget contains the approved planning level of assistance in each country or the functional program for each type of AID assistance. In addition, it establishes loan ceilings by country and geographic region.

In fiscal year 1968, the GVN paid AID about \$7.4 million as the result of claims. During the same period, AID reallocated supporting assistance¹ program funds totaling \$65.3 million made available as the result of the deobligation of funds and the repayment of claims to AID for use in various countries receiving supporting assistance. About \$12.3 million of the total was made available for use in various projects in AID's supporting assistance program for Vietnam.

¹ Supporting assistance is that type of assistance provided under the AID program primarily to further urgent national security and foreign policy objectives in selected countries where development criteria cannot be met. However, it is AID's policy that the amount and specific uses of such assistance should be planned so as to make the maximum possible contribution to development.

CHAPTER 2

EFFORTS OF USAID TO COLLECT DOLLAR

CLAIMS FROM THE GOVERNMENT OF VIETNAM

Although AID has encountered continuing problems in collecting long outstanding dollar claims from the GVN, AID has made only limited attempts to obtain the agreement of the GVN to establish an escrow account from which reimbursements for such claims can be obtained automatically as proposed by the Congress. As an alternative measure, AID and the GVN, in June 1967, established a Joint Task Force to review claims for validity and completeness of supporting documentation and to then present to the GVN for payment within 60 days those claims which the Joint Task Force determined should be paid.

Although AID has been successful in collecting most of the claims that had been outstanding for excessive periods of time as of June 1967 when the Task Force was formed, the problems that led to the proposal to establish an escrow account still exist. The collection of claims continued to require excessive periods of time and compromise settlements, which do not encourage adherence to AID regulations.

EFFORTS TO ESTABLISH AN ESCROW ACCOUNT

We found that USAID made only limited efforts to establish an escrow account to settle long outstanding dollar claims against the GVN in spite of repeated recommendations by the Foreign Operations and Government Information Subcommittee, House Committee on Government Operations, and the sense of the Congress as expressed in the Foreign Assistance Act of 1967.

The House Committee on Government Operations in its report of October 12, 1966, entitled "An Investigation of the U.S. Economic and Military Assistance Programs in Vietnam," recommended that USAID accord high priority to obtaining the assent of the GVN to the establishment of a dollar escrow account, from which U.S. claims against the GVN, arising from irregularities in AID-financed commercial import

transactions, could be automatically collected. The Committee's recommendation was prompted by the slow and generally unsatisfactory manner in which the GVN had been settling refund claims.

This position was reiterated in the Committee's follow-up investigation report of August 25, 1967, wherein the Committee recommended that:

"The Secretary of State should direct the U.S. Ambassador in Vietnam to insist that the GVN establish a \$10 million escrow account. This matter should now be negotiated at the highest levels of the U.S. mission and the GVN."

Subsequently, the Foreign Assistance Act of 1967, approved November 14, 1967, provided for a new section 403 to the Foreign Assistance Act of 1961, as amended, which reads:

"It is the sense of the Congress that the President should seek the agreement of the Government of Vietnam to the establishment and maintenance of a separate special account of United States dollars, which account shall be available solely for withdrawals by the United States, at such times and in such amounts as the President may determine, in satisfaction of United States dollar refund claims against the Government of Vietnam arising out of operations conducted under this Act. Such account should be established in an amount not less than \$10,000,000 and maintained thereafter at a level sufficient to cover United States refund claims as they arise."

Although discussions had been held with the GVN concerning the establishment of an escrow account even prior to the Committee's recommendation, we found that between October 1966 and May 1967 USAID had taken no action on the Committee's initial recommendation. However, on May 9, 1967, the Director of USAID met with the GVN Economic Affairs Minister, who is also the Governor of the National Bank of Vietnam (NBVN), to call his attention to the increase in the total value of unsettled dollar refund claims pending with the GVN.

In a letter to the Economic Affairs Minister dated May 23, 1967, the Director, USAID, indicated that he considered the escrow account method as an unconventional method for settlement of the outstanding amounts.

As an alternative measure, an AID/GVN Joint Task Force was established in June 1967 to review claims for validity and completeness of supporting documentation, and to then present to the GVN for payment within 60 days those claims which the Joint Task Force determined should be paid.

The Joint Task Force, comprising one GVN and one USAID representative, is scheduled to meet weekly to discuss a number of preselected claims. Each claim is considered along with the related documentation and the basis for the claim. The process includes coordination with other USAID and GVN offices as necessary. Summaries are prepared for claims on which agreement is reached, including recommendations for payment by the GVN or for withdrawal by USAID. Claims recommended for payment are processed through the GVN Ministry of Economy to the NBVN for payment. Recommendations for withdrawals or adjustments are transmitted to the appropriate USAID officials for action or for forwarding to AID/Washington, if appropriate.

Our review disclosed that USAID had relied on the Joint Task Force approach as a method of settling claims and had made only limited attempts to establish the escrow account. Discussions were held regarding such an account in October 1967 when the GVN Economic Affairs Minister visited AID headquarters in Washington. AID, however, was unsuccessful in obtaining the assent of GVN officials to the escrow account proposal and it was agreed that the Joint Task Force approach to resolution of the refund problem would continue to be followed.

On December 28, 1967, the Director, USAID, brought to the attention of the GVN Minister of Economy the section of the Foreign Assistance Act of 1967 calling for establishment of the escrow account and urged careful attention to all outstanding claims. However, the Director pointed out to the GVN Minister that no implementing instructions had been received from AID/Washington. The GVN was also apprised of

the provisions of the act in a series of letters from the Director, USAID, to the Governor of the NBVN on December 30, 1967, January 12, 1968, and February 21, 1968. From February 1968 up to the time we completed our fieldwork in 1969, no further action was taken by USAID to seek establishment of the escrow account.

The foregoing actions were the only ones recorded as taken by USAID in relation to the escrow account. Regarding the Committee's second recommendation relating to action to be taken by the Secretary of State, we were unable to find any records showing that formal action had been taken by the Secretary of State to direct the U.S. Ambassador in Vietnam to make strong representations to the GVN to establish a \$10 million escrow account.

LIMITED EFFECTIVENESS OF USAID COLLECTION EFFORTS

Although USAID collected \$7.4 million in claims during fiscal year 1968 under the Joint Task Force procedures, the settlement of dollar claims against the GVN is still beset with problems in that refund claims are submitted sporadically to the GVN and collections require lengthy negotiations and compromise settlements which do not encourage adherence to AID regulations. These are the same problems which the House Committee on Government Operations disclosed in its October 1966 report (H. Rept. 2257) on the U.S. economic and military assistance programs in Vietnam.

We have found, as discussed in this and the following chapter, that certain potential claims exist which have not been formally submitted by AID to the GVN. These claims result from source-origin violations, pledged goods remaining in bank warehouses, and distressed cargo.

The following table shows the results of the billing and collection activities following the establishment of the USAID/GVN Joint Task Force.

Claims outstanding--June 30, 1967		\$ 7,361,903
Add billings:		
Fiscal year 1968	\$ 943,521	
7-1-68 to 12-31-68	2,228,884	
1-1-69 to 3-31-69	205,498	
4-1-69 to 5-26-69	<u> -</u>	<u>3,377,903</u>
		10,739,806
Deduct collections:		
Fiscal year 1968	7,418,506	
7-1-68 to 12-31-68	172,859	
1-1-69 to 3-31-69	96,246	
4-1-69 to 5-26-69	<u>1,594,165</u>	<u>9,281,776</u>
		1,458,030
Less adjustments and withdrawals:		
Fiscal year 1968	474,082	
7-1-68 to 12-31-68	341,835	
1-1-69 to 3-31-69	45,358	
4-1-69 to 5-26-69	<u>270,968</u>	<u>1,132,243</u>
Claims outstanding--May 26, 1969		\$ <u>325,787</u>

Although the table shows that a substantial amount was collected for claims during fiscal year 1968 under the Joint Task Force procedures, only \$269,105 in claims was collected during the first 9 months of fiscal year 1969. As of March 31, 1969, claims totaling about \$1.7 million, or more than 75 percent of the claims then outstanding, had been overdue for periods of 6 months to more than 2 years.

Moreover we found that claims in the amount of \$1.6 million paid by the GVN during April and May 1969 were not the result of the efforts of the Joint Task Force. USAID obtained the payment of the claims on the basis of its consideration not to file additional claims against the GVN totaling \$3.4 million based on violations of the source requirements of section 201.11(b) of AID Regulation 1 which governs commodity transactions financed by AID. This section provides that commodities are not eligible for AID financing if they contain components from ineligible source countries which cost more than 10 percent of the lowest price at which the supplier makes the commodity available for export sale.

During the latter part of calendar year 1968 and the first part of 1969, AID/Washington directed USAID to file

claims with the GVN for these source violations. AID/Washington directed that claims be filed on the basis of reports of investigations issued by AID's Inspections and Investigations Staff (IIS) in calendar years 1967 and 1968. The series of IIS reports presented evidence of several source violations of AID Regulation 1, which occurred on shipments of commodities made between May 1965 and April 1968.

We noted that a major portion of the source violation claims totaling about \$2.3 million were based on IIS reports issued in March and May 1967; however, AID/Washington did not direct USAID to issue these claims to the GVN until January 1969. Although claims totaling \$3.4 million have been established as accounts receivable on AID/Washington records, USAID has not forwarded the bills of collection for these claims to the GVN.

Under AID Regulation 1, AID has the right to file claims for source violations against either the borrower/grantee of the AID funds or the supplier of the commodities. USAID's position of not filing these claims is based on its contention that these claims result solely from the supplier's wrongdoing, either intentional or inadvertent, and that there is no indication that the GVN and/or the Vietnamese importers have acted in other than good faith in these transactions.

As a general practice AID has not filed claims against foreign suppliers in instances of violation of Regulation 1 concerning the source of commodities but has lodged such claims against the recipient country. AID adopted this position as a practical matter because the chances for success in collection of the claims from foreign suppliers due to source violations is very remote, in view of the fact that a rescission of the transaction would require the return of the commodities before the foreign supplier could be expected to refund the money received. In addition, the Department of Justice recommends that such claims be filed against the recipient country. Further, in a memorandum dated December 27, 1968, the AID/Washington Controller stated that he did not believe there were any instances in which AID had filed claims for refunds against foreign suppliers on the basis of source violations.

On June 5, 1969, we were advised by the Director of the Office of the Commodity Control and Surveillance in the AID/Washington Vietnam Bureau that the Acting Administrator of AID and the Director of USAID had made an executive decision not to formally file the claims for the violation of AID Regulation 1 source requirements with the GVN. We were advised further that this decision was to be contingent on the immediate payment of all outstanding claims by the GVN and the institution of procedures to control source violations by the foreign suppliers.

The following schedule compares the amount of claims outstanding by periods as of June 30, 1967, December 31, 1968, and March 31, 1969, as reflected on USAID records, and shows that claims continued to be outstanding for excessive periods of time although the USAID/GVN Joint Task Force procedures provide that claims be paid within 60 days.

<u>Length of time outstanding</u>	<u>Amount outstanding as of</u>		
	<u>June 30, 1967</u>	<u>December 31, 1968</u>	<u>March 31, 1969</u>
Over 2 years	\$ 657,757	\$ 28,440	\$ 29,586
1 to 2 years	3,122,102	178,484	175,977
6 to 12 months	2,811,022	6,857	1,471,783
2 to 6 months	544,863	1,548,466	362,152
1 to 2 months	123,501	19,520	-
Less than 1 month	<u>102,658</u>	<u>345,259</u>	<u>151,421</u>
Totals	<u>\$7,361,903</u>	<u>\$2,127,026</u>	<u>\$2,190,919</u>

Significant progress was made under the Joint Task Force approach toward resolution of the large balance of outstanding claims during fiscal year 1968. However, by November 1968, the problem of long outstanding refund claims was again one of great concern as unreasonably long delays in obtaining settlement of claims were occurring. In August and again in November 1968, the Director of USAID requested that the GVN Economic Affairs Minister use his best efforts to obtain payment of the past due claims. In the first 9 months of fiscal year 1969, the GVN paid only \$269,105 in claims.

The Joint Task Force was inoperative during most of fiscal year 1969. The GVN Minister of Economy, who authorizes the payment of claims, and the GVN representative on the Joint Task Force were replaced. The USAID member of the Joint Task Force departed from Vietnam during the first part of the fiscal year. Moreover we found that, due to illness of the new USAID representative and the Vietnamese New Year's holidays, only two meetings of the Joint Task Force were held during the period December 27, 1968, through March 1969. The payment of \$1.6 million in claims between March 31 and May 26, 1969, by the GVN and its agreement to pay an additional \$326,000 of claims was not the result of Joint Task Force effort.

AGENCY COMMENTS AND GAO EVALUATION

In a draft of this report furnished to AID for comment in February 1969, we concluded that the use of the Joint Task Force to collect claims was no longer justified in view of the limited success it had achieved during the first part of fiscal year 1969 and that AID/Washington should instruct USAID to enter into serious negotiations with the GVN for the establishment of an escrow account in accordance with the sense of the Congress as expressed in the Foreign Assistance Act of 1967.

In commenting on our report draft on June 3, 1969, AID's Acting Assistant Administrator for Administration stated that AID does not agree to the desirability of requesting the GVN to establish an escrow account at this time. AID contends that the policy of using the Joint Task Force has been a very satisfactory vehicle for collecting AID refund claims and that it should be continued. AID's position is based on the following factors:

1. The reduced rate of collections during the first part of fiscal year 1969 occurred during a period when there were several replacements of both USAID and GVN members of the Joint Task Force. In addition, the GVN Minister of Economy who authorizes the payment of claims was replaced during this period. Thus AID did not consider the GVN actions during the period as representative or typical.
2. The GVN took the position, during discussions concerning the problem of collecting refund claims, that these matters were frequently of a complex and controversial nature and therefore the GVN should participate in the evaluation of the refund claims in lieu of having AID exercise exclusive authority in this regard. AID, therefore, concluded that it would have been inevitable that friction would arise if AID had insisted on the escrow account.
3. Since the period of the GAO review, the balance of outstanding claims had been reduced to \$326,000 as of May 26, 1969, as the result of payment of \$1.6 million by the GVN and adjustments of \$271,000.

(As noted above the May 26, 1969, balance does not include \$3.4 million in claims due to source violations of AID Regulation 1.)

As long as the fighting and the resulting disruptive political conditions continue in Vietnam there will never, in our opinion, be a period during which the actions of the GVN can be representative or typical. Moreover, the changes in the membership of the Joint Task Force or in the GVN cabinet positions are not subject to the control of USAID management officials. The changes of the USAID representative on the Joint Task Force occurred because of the fact that the USAID member departed from Vietnam during the period and his replacement served only a short time before being evacuated for medical reasons. In addition, it should be noted that AID employees are normally assigned to duty in Vietnam for only 18 months.

As indicated by AID's comments, continuity of membership is necessary in order that the Joint Task Force may operate effectively to collect claims. We do not believe that, under the circumstances existing in Vietnam, it is feasible to maintain the necessary continuity in the membership of the Joint Task Force. Thus the collection of claims will be subject to interruption.

Both the authority and the responsibility for filing refund claims when violations of AID regulations are detected clearly belong to AID. If Aid does not exercise exclusive authority in determining and filing claims, much of this procedure's effectiveness as a management control to ensure that Aid assistance is utilized in accordance with AID regulations is lost. Allowing the GVN to participate in the evaluation of refund claims to the degree that claims remain outstanding for periods of two or more years, in our opinion, negates much of the effectiveness claims could have in encouraging the GVN to take action to prevent irregularities from recurring in the future. We believe that, if claims are fully researched, judged valid by responsible AID officials, and completely documented when presented to the GVN for payment, there should be little basis for controversy.

Moreover, we believe that procedures could be established under the escrow account concept to provide the GVN a reasonable period of time (30 days) within which to present its position on claims that it considers controversial. USAID, then, could either accept the GVN's position and withdraw the claim or reject the position and automatically draw the amount of the claim from an escrow account.

AID in its comments points to the collection of \$1.6 million in claims between March 31 and May 26, 1969, and to the balance of outstanding claims of \$326,000 as of May 26, 1969, as evidence that the Joint Task Force procedures are fully adequate to effect timely payments by the GVN of refund claims. Although the balance of USAID's record of claims outstanding had been reduced substantially subsequent to the establishment of the Joint Task Force in June 1967, we do not believe that the reduction can be attributed solely to the collection activities of the Task Force.

Although there has been a commendable reduction, through collection action, of long outstanding claims following the establishment of the Task Force, there has also been a substantial reduction in the amount of claims presented to the GVN for payment. During the 2-year period immediately prior to the establishment of the Joint Task Force, claims amounting to about \$6.9 million were presented to the GVN by USAID for payment; however, in the 23-month period following the establishment of the Task Force, claims totaling only \$3.4 million were formally presented to the GVN for payment.

We believe that the reduction in the amount of claims filed is attributable in major part to the fact that USAID under the Joint Task Force procedures has not billed the GVN for all possible claims. As a result there is an understatement in the amount of bona fide claims that otherwise would be reflected as outstanding.

For example, we found that several claims for source violations of AID Regulation 1 were filed in 1967 and subsequently collected from the GVN. As discussed above, however, USAID has not filed claims for the \$3.4 million in source violations which are of the same nature as those

previously billed and collected. In addition, we noted that USAID had long delayed filing claims for several million dollars worth of unused commodities financed under AID's Commodity Import Program. This problem area is discussed in detail in the next chapter of this report.

CONCLUSIONS

After only limited attempts to establish an escrow account, AID, together with the GVN, established a Joint Task Force in an effort to settle the large balance of long outstanding claims filed against the GVN. Although collections during the first year of the Joint Task Force's operation were commendable, we believe that collection efforts by the Task Force were largely ineffective during fiscal year 1969.

The balance of outstanding claims against the GVN had been reduced to \$326,000 as of May 26, 1969, and USAID expected the payment of these claims shortly. However, it appears that USAID has withheld the filing of claims under the Joint Task Force procedures although irregularities involving several million dollars worth of AID-financed commodities have occurred for which USAID could file claims. Moreover, in order to obtain payment since March 31, 1969, of \$1.6 million in long outstanding claims, AID has agreed not to file an additional \$3.4 million in claims resulting from violation of AID Regulation 1 source requirements.

We believe that the settlement of dollar claims against the GVN are still subject to the same problems that the House Committee on Government Operations disclosed in its October 1966 report (H. Rept. 2257) on the economic and military assistance programs in Vietnam. The problems were then and are now that refund claims are submitted only sporadically to the GVN and collections require lengthy negotiations and compromise settlements which do not encourage adherence to AID regulations. We, therefore, do not believe that the Joint Task Force policies have demonstrated their effectiveness to obtain payment of dollar claims from the GVN on a timely basis.

As noted above, the principal stated reason that AID files claims is to encourage recipients to make more effective utilization of AID assistance and to adhere to

prescribed AID regulations. If, as has been and continues to be the case in Vietnam, claims are not filed or are not filed within a reasonable time after irregularities occur, and then remain outstanding for excessive periods of time, AID's use of its right to file a claim as a management control, to prevent irregularities from recurring in other instances, loses much of its effectiveness. We believe that, if the escrow account method of collecting claims were adopted, it would provide a more normal and streamlined procedure for the disposition of refund claims.

MATTER FOR CONSIDERATION BY THE CONGRESS

In view of the significant period of time that has elapsed without effective action on the part of AID since the problem was first disclosed, the Congress may wish to consider whether further guidance should be presented to AID concerning the establishment of an escrow account to facilitate the collection of claims from the GVN.

CHAPTER 3

PROCEDURES

FOR ESTABLISHING CLAIMS

We found that USAID had not fully discharged its responsibility to file claims against the GVN for all refunds due the United States in connection with irregular transactions in the AID-financed Commodity Import Program (CIP) for Vietnam and misuse of project assistance.

Claims for refunds from the GVN either had not been filed or had been billed, only after considerable delay, for the cost of CIP commodities (1) which had not been removed from customs warehouses at the Saigon Port within the prescribed period or (2) which had been held in bank or importer warehouses as collateral for loans and had not been utilized within the Vietnamese economy in a reasonable length of time.

Our review also showed that, although AID's internal audits and reviews of the Commodity Import Program resulted in the filing of many claims for refunds from the GVN, only one of the fiscal year 1967-68 internal audits of AID project assistance to the GVN resulted in a claim for refund. A USAID official informed us that AID internal audit reports on project assistance contained no recommendations for dollar refunds because of the difficulty in establishing whether the GVN or the USAID was responsible for the irregularities. In addition, he stated that AID preferred to devote its efforts to correcting project deficiencies rather than obtaining refunds.

These matters are discussed in the following sections of this report.

CIP COMMODITIES HELD IN CUSTOMS WAREHOUSES AT THE SAIGON PORT

Although there has been a significant decrease in the amount of CIP cargo remaining in GVN port warehouses, we found, during our current review, that quantities of CIP commodities still remained in port warehouses for excessive

periods of time. Due to the continued unsatisfactory state of AID and GVN records relating to these commodities, we were not able to determine their dollar value.

In order to encourage recipients to utilize CIP-financed commodities for their intended purpose within a reasonable period of time, AID regulations provide that AID may require a dollar refund from a recipient country if commodities do not enter the country's trade channels within 90 days after arrival. Such commodities are referred to as distressed cargo and are considered as not being utilized.

Both USAID and AID/Washington, however, informed us that it had been their policy to exhaust all means of moving commodities out of the port and into the economy before resorting to refund action. We believe that AID's failure to request and enforce its right of refund, where the GVN cannot expeditiously provide documentary evidence that CIP commodities on hand more than 90 days after arrival in Vietnam have cleared the port, has contributed materially to the delay in solving the problems of accountability records for CIP commodities and of moving distressed cargo into the Vietnamese economy.

In a previous report¹ to the Congress we pointed out that reports prepared in conjunction with USAID's accounting system for the arrival of CIP cargoes showed that, as of September 30, 1967, there were commodities valued at about \$30 million which had been stored in customs warehouses at the Saigon Port for more than 90 days. We stated further that we agreed with USAID that the report grossly overstated the condition and that by November 1967 there had been a substantial reduction in the congested conditions of the Saigon Port, compared with such conditions in early 1967. The overstatement of the CIP commodities in customs for more than 90 days was attributed by AID to the lack or loss of records in GVN customs prior to March 1967.

¹"Need to Strengthen Control Over Incoming United States AID Cargoes in Vietnam" (B-159451, May 15, 1968) (pp. 22 to 25).

In our previous report we stated that we believed that a firmer USAID position on refund claims could materially contribute to future improvements in GVN customs records and in clarifying the real status of commodities that had previously arrived. We therefore recommended that USAID file refund claims where the GVN could not expeditiously provide documentary evidence that commodities reportedly on hand for more than 90 days after arrival in Vietnam had cleared the port.

We found during our current review that USAID, rather than file claims for refunds where the GVN could not provide the clearance documentation, had attempted to identify and document specific shipments of commodities that had not cleared the port. This effort has been under way since at least May 1967. As of June 12, 1968, USAID had identified commodities valued at about \$543,000, most of which had arrived in the port in 1966 and early 1967. A portion of these commodities had been identified by USAID at least as early as September 1967. However, refund claims were not issued until September 3, 1968.

USAID officials advised us as early as December 1966 that they had developed an arrival accounting system that would identify instances in which importers were not picking up their goods on a timely basis. However, as discussed in our previous report, the information developed by this system grossly overstated the "in customs warehouse" figure in September 1967.

In October 1968, the Director, USAID, advised us that the "book figure" for cargo remaining more than 90 days at the Saigon Port had been reduced to \$3.5 million as of September 30, 1968. We found, however, that USAID had no records to support this figure. Informal documents maintained by the USAID Commodity Arrival Branch showed that, as of March 4, 1969, the distressed cargo in the Saigon Port was valued at \$5.2 million.

The Director agreed with our proposal contained in a draft of this report that the GVN should play a greater role in identifying and moving distressed commodities as well as in obtaining missing documentation for commodities previously released from the port. He further advised us

that USAID was devising a plan with the GVN Director General of the port to transfer all commodities in the port, which had arrived prior to June 30, 1967, to one location.

The purpose of this exercise, according to the Director, USAID, will be to conduct an inventory of the commodities and to encourage importers to remove the commodities from the Port. USAID plans to allow 60 days for removal of goods so identified before filing refund claims. It is significant to note that in this case the cargo will have been in the port for at least 18 months--far in excess of the 90 days allowed under AID regulations.

The Director also advised us that, in the future, refund claims would be filed on all commodities remaining in the port 150 days after arrival in Vietnam.

CIP COMMODITIES HELD IN BANK OR IMPORTER
WAREHOUSES AS COLLATERAL FOR LOANS

We found that USAID was aware that a substantial quantity of CIP commodities had been held in bank warehouses or importer warehouses for extended periods of time, under bank control, as collateral for loans. As is the case with the distressed cargoes at the Saigon Port, these CIP goods had not been entering trade channels within a reasonable period of time after arrival in Vietnam.

Documents in the USAID auditors' files show that the USAID auditors had been aware of the problem of commodities pledged with banks since at least March 1967. In a USAID internal audit report dated May 31, 1967, the practice of storing CIP commodities in bank warehouses as collateral for loans was called to the attention of USAID's Associate Director for Commercial and Capital Assistance (ADCCA). The report contained recommendations that the ADCCA, in cooperation with the GVN:

--obtain lists of AID-financed commodities stored in the commercial bank warehouses and

--obtain authorization for representatives of USAID to visit bank warehouses and inspect the commodities listed.

It was not until October 1967, however, that USAID ADCCA requested the National Bank of Vietnam (NBVN) to have all commercial banks in the Saigon/Cholon area submit monthly status reports of AID-financed CIP commodities held in bank or importer warehouses as security for loans obtained by the importer. According to the USAID auditors, the commercial banks did not begin submitting these monthly status reports to the NBVN until February 1968. The reports, which also listed commodities financed through the GVN's own foreign exchange program, were in turn forwarded by the NBVN to the USAID ADCCA who extracted data relating to the AID-financed CIP commodities and prepared summaries for use within USAID.

The summary report prepared by the USAID ADCCA for March 31, 1968, showed that CIP commodities with a total value of 1.8 billion piasters (equivalent to \$15.2 million) were being held in bank/importer warehouses. The USAID auditors, in a follow-up report dated June 28, 1968, after examination of bank and importer records, found that the status reports overstated the value of pledged commodities. The auditors placed the total value of CIP commodities pledged as security for bank loans and stored either in the bank warehouses or in the importers' warehouses under bank control as of March 31, 1968, at about \$14.9 million. The report showed the value, by year stored, as follows:

<u>Year stored</u>	<u>Value</u>
1968	\$ 900,500
1967	12,223,300
1966	1,605,100
1965	80,800
1964	24,400
1963	24,400
1960-62	<u>31,500</u>
Total	<u>\$14,890,000</u>

The USAID auditors recommended that ADCCA "urge the GVN Ministry of Economy to take prompt action to have importers remove from storage the AID-financed commodities pledged with banks and enter them into the economy." The

auditors did not recommend that claims for refund be filed for those commodities stored in bank warehouses for excessive periods of time.

USAID officials stated that as of September 30, 1968, the total value of CIP commodities being held in bank or importer warehouses had decreased from \$14.9 million as of March 31, 1968, to \$9.8 million. On the basis of the summary report prepared by USAID, we determined that over \$9.6 million worth of commodities had been held for various periods as follows:

	Value (<u>millions</u>)
0 to 90 days	\$1.8
90 to 150 days	1.5
150 days to 7 years	<u>6.3</u>
	<u>\$9.6^a</u>

^aWe were unable to identify from USAID records the period of time the remaining \$200,000 worth of commodities had remained in bank or importer warehouses.

While AID procedures do not define "trade channels," the intent of the procedures is to ensure that CIP-financed commodities attain their intended end use within a reasonable period of time. We believe that it is evident that commodities pledged with banks for extended periods do not meet the criterion of having achieved their intended use and, therefore, that USAID should file refund claims for the value of such commodities.

Although as early as February 1968 USAID had documentation in the form of inventory listings from the various banks indicating that AID-financed commodities had been stored in bank warehouses beyond a reasonable period, no attempt to establish refund claims had been made for such commodities at the time we completed our fieldwork.

After reviewing our summary of the above facts concerning the excessive time CIP commodities remained in bank and

importer warehouses, the Director, USAID, in October 1968, made the following comments:

"The USAID has long recognized the problem of pledged commodities and has urged the GVN to take action to have the commodities redeemed from the commercial banks and placed into trade channels by the importers. At the time, however, the USAID has realized that the problem could not be resolved easily or quickly. *** The accumulation beginning in 1966 resulted, for the most part, from a large one time CIP program increase at the time."

USAID stated that it had intentionally increased the commodity import program during 1966-67 to a very high level for the purpose of controlling inflation. USAID believed that the intentional flooding of the market was successful but that by its very nature the flooding made it impossible for the Vietnamese economy to absorb and utilize all the commodities imported within the period of time usually desired by AID.

In commenting on the large build-up of CIP commodities, the USAID Associate Director for Program and Economic Policy in October 1967 stated:

"We do not feel that any steps should be taken at the present time to put pressure on importers to liquidate stocks, since they would probably not be able to do so without incurring substantial losses. This could have a very debilitating effect on the import community in general. We expect that within the next few months, or until just after the Tet period, we should have an idea of what volume of inventories is really 'hard core' non-sellable commodities and what volume is just slowly moving goods. At that time, we will suggest to the NBVN that pressures be brought to bear to clear these 'hard core' goods out of bank financed inventories and press the importers involved to accept responsibility for their poor judgment. If there are CIP goods

involved in this clean-up, we could then apply to the GVN for refund."

In his October 1968 comments to us the Director USAID also stated:

"The initial TET offensive at the end of January 1968, and subsequent offensives continuing through May 1968, caused extensive damages to local plant and industries; inhibited trade, production, and imports; and drastically slowed down the economy. All this rendered it infeasible to take the measures outlined above to clear the bank warehouses in accordance with the planned schedule.

"As economic and security conditions improved, the USAID pressed the GVN to have the importers remove the commodities from the bank warehouses and enter them into trade channels. The GAO summary indicates that the value of the pledged commodities decreased from \$14.9 million as of March 31, 1968 to \$11.4 million as of July 31, 1968."

(GAO Note: The pledged commodities continued to be moved from bank or importer warehouses during the period USAID used to review our summary, and, as of September 30, 1968, the value of such pledged commodities declined to \$9.8 million.)

"This substantial improvement in the bank-warehouse situation is attributable to increased demand related to improved economic conditions in recent months and to the vigorous efforts undertaken by the GVN to enter these goods into trade channels. The GVN Ministry of Economy has notified importers having AID-financed commodities stored in bank warehouses as loan collateral that the goods must be promptly redeemed; otherwise, refund action may ensue. We believe that the effectiveness of the GVN's action is evident in the improved position at the end of August 1968.

"In anticipation of further substantial reductions in the coming months, we will continue to monitor this situation diligently and to work closely with the GVN in the matter. It continues to be our objective to attain optimum utilization of the importer commodities in question. We will undertake another complete review of the status of pledged commodities in January 1969, and at that time, will file refund claims for hard-core nonutilized commodities, applying the 'reasonable period' (and not the 90-day period) test as defined in Manual Order No. 792.1.1. To that end, on October 7, 1968, we formally notified the GVN to clear the bank warehouses by January 1969, as we intended to commence a comprehensive audit of the warehouses at that time and file refund claims for any commodities remaining therein beyond the above-described reasonable period.

* * * * *

"We believe that the soundness of the course of action recommended and pursued has been demonstrated by the marked reduction during the period March 31, to August 31, 1968, in the value of the commodities pledged."

AGENCY COMMENTS AND GAO EVALUATION

In its comments on a draft of this report, AID agrees that it has not exercised the right to file refund claims against the GVN for nonutilization of commodities, contrary to the general AID practice elsewhere in the world. AID also agrees that there was a buildup of CIP commodities stored in customs warehouses for unusual periods of time and that there was a problem of nonutilization of CIP commodities as a result of their being pledged by importers to banks as collateral for loans.

AID further states that, rather than file claims as a basis for settling such problems, it believes that a more appropriate course of action should center around (1) taking all possible measures for facilitating the movement of goods lying in warehouses or pledged to banks into commercial channels and (2) taking the necessary time to develop precise information concerning commodities whose nonutilization clearly indicates that the importers do not intend to pick them up or to make them available to the commercial market even after they have been located and importers have been urged to move them.

According to AID, the distressed cargo in the port warehouses and the nonutilization of CIP commodities as a result of their being pledged by importers to banks as collateral resulted from the fact that the commodities were imported under a significantly increased commodity import program designed to absorb the excessive purchasing power which would otherwise set off a severe inflationary spiral. This increased flow of commodities, coinciding with the chaotic period of port congestion, caused many importers to have difficulties in locating and marketing reasonably promptly the increased volume of goods. AID, therefore, believed that a hard line refund policy during the period would not have contributed to the economic objectives of the program while the alternative actions taken resulted in breaking most of the bottlenecks which were temporarily holding imports off the Vietnamese market.

We agree that AID should take all practical measures to facilitate the movement of the distressed cargo in the port warehouses, and of the commodities stored in bank and

importer warehouses as collateral for loans, into commercial channels. However, both types of nonutilization of CIP commodities have been long standing problems in Vietnam. In June 1966, USAID established a Commodity Arrival Section within the USAID Office of the Assistant Director for Financial Management and gave this section the responsibility to keep management officials advised regarding the status of AID-financed distressed cargo. As noted above, a USAID internal audit report dated May 1967 disclosed the problem of AID-financed commodities in bank and importer warehouses for excessive periods of time.

In this connection AID regulations provide that AID may request refunds for the cost of commodities if they are not utilized in the recipient country's economy within 90 days. USAID, in accordance with a proposal included in a draft of this report, studied the time frame for moving commodities into the Vietnamese economy and concluded that, 150 days represented the maximum reasonable time for importers to move commodities into the economy. Moreover, in its comments on our draft, AID advised us that the Vietnamese Minister of Economy had issued a notice, dated March 31, 1969, requiring all importers to remove cargoes pledged to banks for more than 90 days by May 1, 1969, or be permanently suspended from access to CIP funds. In addition, such importers would be required to refund the local currency equivalent of the foreign exchange value of the nonutilized commodities. Further, importers have been notified that they must pick up their cargoes and present them for sale on the local market within 90 days from the date of their arrival in Saigon Port or be subject to permanent suspension from access to CIP funds.

Thus, even considering the problems of administering the heavy influx of commodities into Vietnam during 1966 and 1967 and operating an economic assistance program while fighting is occurring, we believe that the failure to file claims to correct deficiencies in the utilization of commodities which have been continuing for 2 and 3 years is unreasonable.

AID in its June 1969 comments on our draft of this report advised us that, in addition to the March 31, 1969, notice issued by the Vietnamese Minister of Economy, the

following actions had been taken with respect to the problems of pledged goods and distressed cargoes.

--The USAID initiated in January 1969, two separate audits for purposes of determining factually the existence and value of such nonutilized goods. Preliminary results of the port audit indicate that virtually all commodities imported during the buildup period have been removed from customs and that no commodities imported recently can be classified as distressed cargo. As of April 28, 1969, the Saigon Port was declared to be virtually cleared of distressed cargo with only about 150 tons of miscellaneous, damaged, deteriorated, and/or unidentifiable commodities remaining, of which only about 44 percent was identifiable as AID financed.

--AID also stated that the audit had been completed on commodities pledged to banks. It reflected that as of December 31, 1968, \$4,320,317 worth of commodities had been stored in the warehouses of commercial banks in excess of 150 days.¹ In view of evidence that since December 31, 1968, importers had moved perhaps as much as \$2 million worth of commodities out of the pledged category and into commercial channels, the USAID was updating its audit findings to reflect current balances.

--AID expected this updating to be completed prior to June 1, 1969, upon which USAID would file refund claims for those commodities remaining in the category of having been pledged to banks in excess of 150 days. Periodic reviews would be made in the future to detect commodities which remain pledged to banks for excessive periods of time, and refund claims would be filed in appropriate instances.

¹AID's audit report actually shows that as of December 31, 1968, commodities valued at \$5.4 million had been stored in bank warehouses in excess of 150 days; however, AID auditors concluded that about \$1.1 million of these commodities were in the process of being utilized.

--AID also stated that, in response to proposals contained in our report draft, the USAID had examined the current situation and had concluded that 150 days represented a maximum reasonable time for importers to make their CIP commodities available to the market after arrival; and USAID had adopted the position that refund claims would be filed when this time limit was exceeded.

CONCLUSIONS

Although the heavy fighting in Vietnam during the first half of calendar year 1968 may have to some extent prevented USAID from filing refund claims on a timely basis, we believe that USAID has carried out a tolerant policy with regard to filing refund claims. We believe that the fact that AID did not file refund claims for commodities remaining in the Saigon Port and in bank and importer warehouses for excessive periods of time contributed materially to the prolonged nonutilization of these commodities.

Moreover, we do not believe that USAID has exercised its right to file refund claims in a timely or effective manner to encourage more efficient utilization of CIP commodities--a major purpose of this right. As discussed in the above sections of this report, USAID has now adopted action programs which are reducing the amounts of commodities at the port and in the warehouses and has undertaken audits which are to culminate in refund claims. The fact remains, however, that these commodities were not utilized for excessive periods of time and have not had their total possible effect upon the Vietnamese economy.

The actions discussed above, which have been taken by the GVN Minister of Economy and USAID since our fieldwork, should result in material improvements in the long standing problems of distressed cargo and pledged commodities. Substantial improvement should result in utilization of CIP-financed commodities if (1) the Minister of Economy enforces his March 31, 1969, notice suspending access to CIP funds by importers if they do not present CIP commodities for sale on the local market within 90 days from the date of their arrival in the Saigon Port and (2) USAID makes periodic reviews to detect commodities which remain pledged to banks

for excessive periods of time and files refund claims in appropriate instances.

PROJECT ASSISTANCE AND PUBLIC LAW 480
TITLE II COMMODITIES

AID regulations covering Public Law 480 Title II¹ commodities provide that the cooperating government shall pay the United States the value of commodities lost through any act or omission on the part of the recipient or as a result of failure to provide proper storage, care, and handling. Applicable AID regulations also provide that a refund may be requested when commodities acquired under project assistance have been improperly used.

We noted that during fiscal year 1968 all but one of the claims for refunds which USAID filed with the GVN pertained to CIP commodities and that limited attention was given to filing claims for misuse of project assistance or Public Law 480 Title II commodities.

We found several instances in which USAID audit reports concerning Public Law 480 Title II and project assistance disclosed such deficiencies as (1) inadequate accountability records, (2) diversion and misuse of commodities, and (3) commodities damaged through improper storage and handling. However, no recommendations were made that dollar refund claims be considered for filing. We were informed by USAID officials that the absence of such recommendations was due, primarily, to the difficulty of establishing whether GVN or USAID was responsible for the irregularities.

¹Under this title of Public Law 480, the United States provides the GVN with local currency funds derived from the sale of U.S. agricultural commodities in Vietnam for use in development and emergency relief programs.

AGENCY COMMENTS AND GAO EVALUATION

In our report draft we proposed that USAID, in its reviews of irregularities in Public Law 480 and project programs, devote sufficient effort to determine the party responsible for the irregularities and file claims for refunds in those instances where the GVN is at fault.

In its June 1969 comments on our draft, AID stated that it had been and would continue to be USAID policy to file claims whenever satisfactory evidence exists to prove loss, misuse, or diversion of AID commodities and to identify the responsible party. We were also advised that subsequent to our audit USAID filed a claim for \$6,128 against the GVN for failure to account for the distribution of certain Public Law 480 commodities as well as a local currency claim for 4.4 million piasters for failure to comply with the provisions of the project agreement.

AID also advised us that USAID was seeking to meet our proposal to improve procedures for fixing responsibility on project assistance and Public Law 480 commodity irregularities and for filing refund claims thereon. In this regard, AID, on January 27, 1969, issued instructions redefining responsibilities and procedures for reporting and filing claims for inland loss and damage or improper distribution of Public Law 480 Title II commodities. AID believes that this directive will assist in meeting the objectives of our proposal.

In our opinion, the establishment of improved procedures, including devoting the necessary efforts to fixing responsibility on project assistance and Public Law 480 commodity irregularities, should result in more effective filing of refund claims and should encourage more effective utilization of AID assistance by the GVN.

CHAPTER 4

SCOPE OF REVIEW

Our review was directed primarily toward an examination into (1) the effectiveness of the efforts of the United States Agency for International Development, Vietnam, in collecting, from the Government of Vietnam outstanding claims arising from AID-financed transactions, (2) the effectiveness of USAID procedures for detecting and reporting violations for which claims should be filed, and (3) the efforts made by USAID to implement a provision in the Foreign Assistance Act of 1967 (22 U.S.C. 2151) that the United States seek the establishment of an escrow account by the GVN for withdrawals by the United States as surety for prompt settlement of claims.

We reviewed program documents, reports, correspondence, and other pertinent material available at AID headquarters in Washington, D.C., and at AID's overseas mission in Vietnam and discussed relevant matters with responsible AID officials. Our fieldwork in Vietnam was completed in January 1969.

APPENDIXES

INTERNATIONALLY

LEFT BANK

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D. C. 20523

ASSISTANT
ADMINISTRATOR

Mr. Oye V. Stovall
Director, International Division
U. S. General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

JUN 3 1969

Dear Mr. Stovall:

We wish to thank you for the draft copy that you have made available of the General Accounting Office (GAO) review of the policies and procedures followed by the Agency for International Development in the billing and collection of United States dollar refund claims against the Government of Vietnam (GVN).

We have carefully studied your draft report and note that many of the issues raised in it have been considered by the United States A. I. D. (USAID) Mission in Saigon and the Mission has informally given GAO representatives its comments on the GAO findings.

In this letter, we also make available to you our comments and observations on the findings, conclusions, and recommendations contained in the draft report.

USAID Collections, Policies, and Procedures

We note that on the basis of the GAO review you have concluded that USAID's current policies and procedures for collecting refund claims are not sufficiently effective; and therefore, you have recommended that negotiations be entered into with the GVN for the establishment of an escrow account as suggested in the Sense of Congress provision of the Foreign Assistance Act of 1967.

Status of USAID Collection Efforts. With respect to your findings on this matter, we are still persuaded that our policies and procedures have demonstrated their effectiveness and, therefore, do not agree to the desirability of requesting the GVN to establish an escrow account at this time. We note that the GAO supports its conclusion by citing the reduced rate of collections for the first six months of Fiscal Year 1969. While we agree that the rate of collections was considerably lower in this period compared to the rate applicable to Fiscal Year 1968, we do not believe the first six months of Fiscal Year 1969 is

Mr. Oye V. Stovall

representative or typical of action we can expect from the GVN. In addition to the problems the GVN faces in its defense against communist aggression, several changes took place in GVN cabinet positions during this period including the replacement of the Minister of Economy who authorizes payments of claims. The GVN representative on the USAID/GVN Joint Task Force was also replaced. Furthermore, the USAID member of this Task Force departed Vietnam during this period and his replacement served only a short time before being medically evacuated. Despite these inhibiting factors, as of December 31, 1968, claims which had been outstanding for more than six months as of June 30, 1967, and which were then valued at \$6.6 million, had been reduced through the employment of current collection policies and procedures to about \$200,000.

Accordingly, we are firmly convinced that our current policies and procedures for collections are fully adequate to effect timely payment by the GVN of refund claims. We expect that the rate of collection will be speeded up and maintained at this faster pace during Calendar Year 1969.

Escrow Account. In response to the problem of delays in obtaining payment on refund claims from the GVN and suggestions of the Committee on Government Operations that the GVN establish an escrow account under the exclusive control of the United States for paying these claims, discussions were held with the GVN even before passage of Section 403 of the Foreign Assistance Act. In these discussions, the GVN took the position that, in view of the frequently complex and controversial nature of these matters, it should participate in the evaluation of the refund claims in lieu of having A. I. D. exercise exclusive authority in this regard.

It is our opinion that the GVN position is understandable on both counts. However, we also feel that adequate action must be forthcoming on timely GVN payment of A. I. D. refund claims if we are to continue the procedural arrangements which are more acceptable to the GVN than would be the escrow account idea.

We believe that the Joint Task Force concept developed with the GVN to deal with this problem reduced the number of outstanding claims in a reasonably effective manner, thereby achieving the goals expressed in Section 403 of the Foreign Assistance Act. Moreover, we feel this has been achieved without the inevitable friction that would have arisen if A. I. D. had insisted on the escrow account.

As reflected by your report, the backlog of claims was reduced from \$7.4 million on June 30, 1967, to \$2.8 million on December 31, 1968. Since

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the period of your review, the level had been reduced to \$2.2 million as of March 31, 1969. Since that date payments by the GVN of \$1.6 million and adjustments of \$271,000 have reduced the residual balance to \$326,000 as of May 26, 1969. Of that balance, receipt of \$157,000 is expected momentarily by A.I.D. and \$102,000 represents sales agents' commissions on which the USAID is working to obtain payment subject to later adjustment after the NBVN makes a complete document reconciliation.

To complete the record of the status of GVN refund claims, although A.I.D.'s Accounts Receivable records showed a balance of \$5,627,074 at March 31, 1969, that balance included total A.I.D./W initiated claims of \$3,497,365 based on apparent source violations on shipments from "PD-31" countries. The USAID has taken exception to the basis for these claims and, therefore, has not formally presented them to the GVN for collection. After extended review of the USAID position, A.I.D./W is now considering withdrawal of these claims.

Therefore, it is our opinion that USAID's policy of using the Joint Task Force has been a very satisfactory vehicle for collecting A.I.D. refund claims and should be continued. Due to the approaches made by A.I.D. and the existence of Section 403 of the Foreign Assistance Act, the Vietnamese Government is well aware of the importance we attach to this problem. In view of this, we expect their continuing cooperation under existing arrangements without the necessity of pressing the GVN for highly unpalatable solutions.

USAID Billings, Policies, and Procedures.

The draft report concludes that USAID's policies and procedures for establishing refund claims against the GVN have been inadequate and, as a result thereof, claims have not been filed or have been billed only after considerable delay.

The GAO review refers to the existence of an undetermined amount of commodities which apparently have reposed in customs warehouses or have been pledged by importers with banks as collateral against commercial loans for considerable periods of time without refund claim action. The report also finds that project assistance and PL 480 commodities have been exposed to irregularities without sufficient effort being made by the USAID to determine the party responsible for such irregularities as a basis for filing refund claims. The report also recommends that the USAID establish a reasonable time frame during which Commodity Import Program (CIP) commodities should enter the economy and the adoption by the USAID of a firm position that refunds be applied for when the time limit is exceeded.

The USAID readily admits that, in some circumstances, it has not exercised its right to file refund claims against the GVN for nonutilization of commodities as is the A.I.D. practice in general elsewhere in the world. In these cases the USAID has followed the policy of avoiding resort in the first instance to refund claims as a basis for settling such problems. The

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USAID has felt that the more appropriate courses of action should center around (a) taking all possible measures for facilitating the movement of goods lying in warehouses or pledged to banks into commercial channels, and (b) taking the necessary time to develop precise information concerning commodities whose nonutilization is due to a clear indication that the importers do not intend to pick them up or to make them available to the commercial market even after they have been located and importers have been urged to move them.

The USAID has filed claims when conclusive facts were established in support thereof. The value of claims filed on distressed cargoes is \$653,503.29, subsequently reduced to \$454,191.79 when importers removed aging cargo. This billing policy is still in effect.

The policy and procedures for billing the GVN have been influenced by an important U.S. policy determination made in Fiscal Year 1966. In order to avert the disastrous consequences which severe inflationary pressures would have on the conduct of the war, the commodity import program was significantly stepped up to absorb the excessive purchasing power in the economy which would otherwise set off a severe inflationary spiral. An unavoidable consequence of the counter-inflationary program was a temporary imbalance in some commercial markets coinciding with the chaotic period of port congestion which caused difficulties to many importers in locating and marketing reasonably promptly the increased volume of goods. A hard line refund policy during that period would not have contributed to the economic objectives of the program while the alternative actions taken as described in these comments did result in breaking most of the bottlenecks which were temporarily holding imports off the domestic markets.

CIP Commodities in Customs Warehouses. As the report indicates, there was a buildup of CIP commodities stored in customs warehouses for unusual periods of time as of September 30, 1967. Not only were the figures of the commodities so stored grossly overstated, as attested to by the report, but also in view of the destruction and unreliability of customs records it was impossible to identify goods in the distressed category and match them with the importers who had ordered them without the employment of exceptional measures. The USAID might simply have adopted a policy of filing refund claims based on the lack of documentation (or on the existence of unreliable documentation) concerning the status of CIP commodities which had reportedly arrived in Vietnam. Instead, the USAID decided to establish task forces with the responsibility of seeking out aging cargoes, notifying importers of their whereabouts, and urging them to clear them through customs. Measures such as these substantially reduced the amounts of commodities that were in the aging category.

The USAID also followed a flexible policy with respect to filing refund claims on transactions arising out of the unusual period of 1966 and 1967. This was true even in instances in which importers had been advised of the

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status of their cargoes and had failed to clear them through customs because their marketability had been temporarily adversely affected by the increased volume of available goods provided by the counter-inflationary program described above. That program met its objective by keeping inflationary pressures under manageable control but by its very nature made it difficult for the Vietnamese economy to absorb and utilize all of the CIP imports within a time frame normally applied by A.I.D. in countries not subject to hostilities on their soil.

CIP Commodities Pledged to Banks. The problems incident to the nonutilization of CIP commodities as a result of their being pledged by importers to banks as collateral on loans are in many ways similar to the circumstances surrounding distressed cargo. With many commodities in temporary oversupply during the counter-inflationary supply buildup, importers were obviously experiencing difficulty in moving many of their goods into consumer channels. In addition, during this period some middlemen tended to hold back on their purchases from importers with the hope of forcing overextended importers into financial difficulty and then obtaining imports at low prices as a result of forced sales. Therefore, the USAID and the GVN countered these tactics by encouraging commercial banks to extend credit liberally to overextended importers and this inevitably resulted in a buildup of commercial imports pledged to banks.

As the aforementioned problems began to ease, the USAID applied increasing pressure to induce importers to take possession of their commodities, either in customs warehouses or pledged to banks, and offer them on the commercial market. Since mid-1967, these measures have included seeking the cooperation of the GVN to apply pressure on importers to remove such products from their pledged state.

The most recent USAID comprehensive inventory of all bank warehouses shows that the measures undertaken by the GVN to move CIP commodities from such warehouses has been quite successful. In the period March 31 to December 31, 1968, approximately \$10 million of pledged CIP commodities have been removed. The current inventory is valued at \$4.3 million and the removal of pledged goods out of warehouses is continuing.

In this connection, the Minister of Economy issued a notice, dated March 31, 1969, requiring all importers to remove cargoes pledged to banks for over 90 days by May 1, 1969, or be permanently suspended from access to CIP funds. In addition, such importers will be required to refund the local currency equivalent of the foreign exchange value of the nonutilized commodities. Furthermore, importers have been notified that they must pick up their cargoes and present them for sale on the local market within 90 days from the date of their arrival in Saigon port or be subject to permanent suspension from access to CIP funds.

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In seeking to liquidate these twin problems of pledged goods and distressed cargoes, the USAID initiated in January 1969, two separate audits for purposes of determining factually the existence and value of such goods. Preliminary results of the port audit indicate that virtually all commodities imported during the buildup period have been removed from customs and that no commodities imported recently can be classified as distressed cargo. As of April 28, 1969, the Saigon port was declared to be virtually cleared of distressed cargo with only about 150 tons of miscellaneous, damaged, deteriorated, and/or unidentifiable commodities remaining, of which only about 44 percent identifiable as A.I.D. financed.

The audit has now been completed on commodities pledged to banks. It reflects that as of December 31, 1968, \$4,320,317 worth of commodities had been stored in the warehouses of commercial banks in excess of 150 days. In view of evidence that since December 31, 1968, importers have moved perhaps as much as \$2 million worth of commodities out of the pledged category and into commercial channels, the USAID is updating its audit findings to reflect current balances. We expect this updating to be completed prior to June 1, 1969, upon which USAID will file refund claims for those commodities remaining in the category of having been pledged to banks in excess of 150 days. Periodic reviews will be made in the future to detect commodities which remain pledged to banks for excessive periods of time, and refund claims will be filed in appropriate instances.

Virtually all of the commodities that have been in the distressed or pledged categories were imported during the 1966-1967 period of the supply buildup. The value of those goods that still remain in that category represents approximately one-half of 1 percent of the total commercial import program which amounted to more than \$600 million in Fiscal Years 1966 and 1967. Making allowances for the normal lag in delivery one can conclude that the Vietnamese economy has now almost totally absorbed the commodities which were made available during the peak import period.

We, therefore, conclude that USAID has pursued the problems of distressed cargoes and pledged commodities in a reasonable manner. USAID's policy has been to use all conceivable measures to clear the port and to facilitate the movement of CIP goods through customs and into the streams of commerce. The evidence appears to be clear that this policy has been successful. In instances in which clear evidence had been obtained that importers were unduly unwilling to pick up their cargoes,

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the GVN has applied sanctions such as suspension or temporary withdrawal of import privileges; and in extreme cases, some goods were seized by the GVN and made available for auction.

Time Frame for Moving CIP Commodities. The report recommends that the USAID perform a study to determine a reasonable time frame within which it can be anticipated that CIP commodities can be moved into the economy after delivery and that the USAID adopt a firm position that refunds be applied for when the time limit is exceeded.

In response to those recommendations, the USAID has examined the current situation and has concluded that 150 days represent a maximum reasonable time for importers to make their CIP commodities available to the market after arrival; and USAID has adopted the position that refund claims will be filed when this time limit is exceeded.

Project Assistance and PL 480 Commodities. The report finds that the USAID, in its reviews of irregularities in PL 480 and project assistance programs, has not made a sufficient effort to fix responsibility for the irregularities and has not filed claims for refunds when the GVN was at fault.

It has been, and will continue to be, USAID policy to file claims whenever satisfactory evidence exists to prove loss, misuse, or diversion of A. I. D. commodities and to identify the responsible party. For example, the USAID recently filed a claim for \$6,128 against the GVN for failure to account for the distribution of certain PL 480 commodities and for VN\$4,353,226 for failure on the part of the GVN to comply with the provisions of a Project Agreement.

The USAID does not file claims when evidence is insufficient to fix responsibility for irregularities. Frequently the information produced by audits and investigations is ambiguous and unclear. This is the situation surrounding the shortages of commodities in a USAID-operated warehouse allegedly looted during the 1968 Tet offensive and again during the Viet Cong May 1968 offensive. The USAID investigation produced no clear-cut evidence that any of the losses could be attributed either directly to looting by GVN military or police personnel or indirectly to their negligence. Accordingly, the USAID had no basis for filing refund claims.

With respect to the report's recommendations for fixing responsibility and filing refund claims relative to irregularities in PL 480 transactions, A. I. D. on January 27, 1969, issued M. O. 1571.4 redefining responsibilities and procedures for reporting and filing claims for inland loss

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and damage or improper distribution of PL 480, Title II commodities. All A.I.D. Missions were alerted to the urgency of complying with this new manual order by Airgram (AIDTO Circular A-320). We believe that the new directives will assist in meeting the objectives of the GAO recommendation.

Summary

We appreciate the GAO suggestions and recommendations in its report. In reevaluating USAID's performance with respect to billings and collections, in the light of the information contained in the report, we are convinced USAID's performance during a very troubled and difficult period has been commendable. We are encouraged by our feeling that the environmental situation will be much improved in the future for the collection and billing of refund claims. For one thing, we believe the dislocating effects of the need to expand the supply of goods in the economy have by now been fairly well eliminated. We are also hopeful that the trend of hostilities will be such that there will be a reduced disruptive effect on the processes of government in Vietnam.

In evaluating USAID's performance, we believe that appropriate weight should be given to the environmental conditions which inhibited the USAID in its attempt to establish and maintain a smooth and orderly process in the billings and collections of refund claims. The unexpected expansion of the war in 1965, and the large scale entry of North Vietnam into the war immediately thereafter, had an extraordinarily disruptive effect on the continuity of Vietnamese government operations and, accordingly, on performance. In addition, the counter-inflationary policy in Fiscal Years 1966 and 1967 seriously interfered with the normal workings of the commercial sector and, therefore, in absorption of imports. These and other environmental factors disturbed the political and commercial processes, resulting in problems with respect to identifying and moving commercial goods.

The USAID could have chosen the administratively convenient way to deal with these problems by simply filing refund claims against cargoes suspected or presumed to be aging or pledged to banks. Instead A.I.D., while not ceasing to file refund claims when supportable, adopted the policy for this transition period of seeking measures which would enhance the movement of such goods into the marketplace and their absorption by the Vietnamese economy. Our assessment is that USAID's policies were successful and contributed greatly to keeping dangerous inflationary pressures under manageable control.

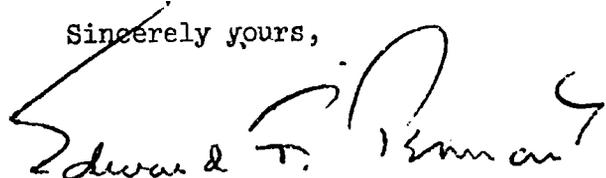
Now that the problems of aging and pledged goods are on the way to satisfactory resolution, the USAID has established a reasonable time

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frame for moving CIP goods into the marketplace and has adopted a policy of filing refund claims when that time limit is exceeded. The USAID is also seeking to meet the GAO recommendations for improved procedures to fix responsibility on project assistance and PL 480 commodity irregularities and for filing refund claims thereon.

We trust that the above is evidence of the fact that the troublesome period of 1966 and 1967 is a thing of the past. We are currently in a period in which commodities are entering the economy in a more normal and orderly fashion. We believe that we and the GVN have agreed on satisfactory policies and procedures for billings and collections of refunds in those relatively few instances of nonutilization or misuse of A. I. D.-financed commodities.

Sincerely yours,



Edward F. Tennant
(Acting)

PRINCIPAL OFFICIALS
RESPONSIBLE FOR ADMINISTRATION OF THE ACTIVITIES
DISCUSSED IN THIS REPORT

<u>Tenure of office</u>	
<u>From</u>	<u>To</u>

DEPARTMENT OF STATE

SECRETARY OF STATE:

William P. Rogers	Jan. 1969	Present
Dean Rusk	Jan. 1961	Jan. 1969

UNITED STATES AMBASSADOR TO THE
REPUBLIC OF VIETNAM:

Ellsworth T. Bunker	Apr. 1967	Present
Henry Cabot Lodge	Aug. 1965	Apr. 1967

AGENCY FOR INTERNATIONAL DEVELOPMENT

ADMINISTRATOR:

John A. Hannah	Apr. 1969	Present
Rutherford M. Poats (acting)	Jan. 1969	Feb. 1969
William S. Gaud	Aug. 1966	Jan. 1969

ASSISTANT ADMINISTRATOR, FAR EAST
BUREAU (note a):

Rutherford M. Poats	Apr. 1964	May 1967
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ASSISTANT ADMINISTRATOR, VIETNAM
BUREAU (note a):

Joseph A. Mendenhall (acting)	Feb. 1969	Present
James P. Grant	June 1967	Feb. 1969
Walter G. Stoneman (acting)	May 1967	June 1967

CONTROLLER:

Charles F. Flinner	Oct. 1964	Present
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PRINCIPAL OFFICIALS

RESPONSIBLE FOR ADMINISTRATION OF THE ACTIVITIES

DISCUSSED IN THIS REPORT (continued)

<u>Tenure of office</u>	
<u>From</u>	<u>To</u>

AGENCY FOR INTERNATIONAL DEVELOPMENT (continued)

DIRECTOR, MISSION TO THE REPUBLIC
OF VIETNAM:

Donald G. MacDonald

Sept. 1966 Present

^aEffective May 21, 1967, a separate bureau was formed within AID to administer U.S. economic assistance programs in Vietnam. Prior thereto, AID's Far East Bureau administered the Vietnam programs.