

103D CONGRESS  
1ST SESSION

# S. 722

To amend the Foreign Assistance Act of 1961 to reform United States bilateral economic assistance programs, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1 (legislative day, MARCH 3), 1993

Mr. BOREN (for himself, Mr. BYRD, Mr. BAUCUS, Mr. LIEBERMAN, and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

To amend the Foreign Assistance Act of 1961 to reform United States bilateral economic assistance programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Aid for Trade Act of  
5 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1           (1) the end of the Cold War affords the United  
2 States the opportunity to reevaluate its foreign  
3 assistance priorities;

4           (2) the United States must leverage its foreign  
5 assistance program, in a humane and balanced way,  
6 to enhance American economic competitiveness and  
7 to build long-term commercial relationships with  
8 recipient countries;

9           (3) notwithstanding an agreement by member  
10 nations of the Organization for Economic Coopera-  
11 tion and Development (OECD) to restrict the prac-  
12 tice of tied aid, America's economic competitors are  
13 skillfully using their foreign assistance programs to  
14 expand markets for their goods;

15           (4) at the same time, only 35 cents of the for-  
16 eign aid dollar were spent on American goods in  
17 1989, while in 1991, 70 percent of United States  
18 Economic Support Fund assistance was provided as  
19 cash; and

20           (5) the Agency for International Development  
21 has not responded adequately to the need to use for-  
22 eign assistance to develop long-term commercial  
23 relationships.

1 **SEC. 3. TRADE AND DEVELOPMENT AGENCY.**

2 (a) **AUTHORITY TO FINANCE CAPITAL PROJECTS.**—  
3 Section 661(a) of the Foreign Assistance Act of 1961 (22  
4 U.S.C. 2421(a)) is amended by inserting “, including cap-  
5 ital projects” after “development projects in developing  
6 and middle-income countries”.

7 (b) **FUNDING.**—Section 661(f) of such Act (22  
8 U.S.C. 2421(f)) is amended by adding at the end the fol-  
9 lowing new paragraph:

10 “(3) Of the amounts authorized to be appropriated  
11 by part I of this Act other than chapter 1 (relating to  
12 development assistance), by chapter 4 of part II of this  
13 Act, or by section 201(b) of the Support for East Euro-  
14 pean Democracy (SEED) Act of 1989, there is authorized  
15 to be available \$435,000,000 for fiscal year 1994 to carry  
16 out this section.”.

17 (c) **DEFINITION.**—Section 661 of such Act is amend-  
18 ed by adding at the end the following new subsection:

19 “(g) **DEFINITION.**—The term ‘capital project’ means  
20 a project involving the construction, expansion, alteration  
21 of, or the acquisition of equipment for, a physical facility  
22 or physical infrastructure, including related engineering  
23 design (concept and detail) and other services, the pro-  
24 curement of equipment (including any related services),  
25 and feasibility studies or similar engineering and economic  
26 services.”.

1 **SEC. 4. LIMITS ON CASH TRANSFERS.**

2 (a) LIMITATION.—For each of the following fiscal  
3 years, cash transfers shall not represent more than the  
4 corresponding percentage of Economic Support Funds:

5 (1) For fiscal year 1994, 50 percent.

6 (2) For fiscal year 1995, 45 percent.

7 (3) For fiscal year 1996, 40 percent.

8 (4) For fiscal year 1997, 35 percent.

9 (5) For fiscal year 1998, 30 percent.

10 (b) DEFINITIONS.—For purposes of this section—

11 (1) the term “cash transfers” means Economic  
12 Support Fund assistance provided as cash payments  
13 which are not used for the purchase of United  
14 States goods and services or the repayment of debt  
15 owed to the United States Treasury; and

16 (2) the term “Economic Support Funds” means  
17 assistance under chapter 4 of part II of the Foreign  
18 Assistance Act of 1961.

19 **SEC. 5. PROCUREMENT REQUIREMENTS.**

20 (a) PROCUREMENT.—Section 604 of the Foreign As-  
21 sistance Act of 1961 is amended to read as follows:

22 **“SEC. 604. PROCUREMENT.**

23 “(a) STATEMENT OF POLICY.—It shall be the policy  
24 of the United States—

25 “(1) to give preference to the procurement of  
26 commodities and services from the United States in

1 foreign assistance programs using funds authorized  
2 to be appropriated by this Act; and

3 “(2) to the extent that United States suppliers,  
4 contractors and goods are eligible for procurements  
5 financed by such donor or lender countries, to per-  
6 mit suppliers, contractors and goods of other donor  
7 or lender countries to compete for United States  
8 Government-financed procurements.

9 “(b) LIMITATIONS ON PROCUREMENT OUTSIDE THE  
10 UNITED STATES.—

11 “(1) IN GENERAL.—Funds made available for  
12 assistance under this Act may be used by the Presi-  
13 dent for procurement only in the United States, the  
14 recipient country, or developing countries, except as  
15 provided otherwise in this subsection. For purposes  
16 of this section, the term ‘developing countries’ shall  
17 not include advanced developing countries.

18 “(2) OTHER PROCUREMENT.—The provisions of  
19 paragraph (1) shall be applicable except where it is  
20 determined that—

21 “(A) the provision of such assistance re-  
22 quires commodities or services of a type that  
23 are not produced in and available for purchase  
24 in any country described in paragraph (1); or

1           “(B) procurement in such other country is  
2 essential—

3                   “(i) to meet emergency situations; or

4                   “(ii) to promote efficiency in the use  
5 of United States foreign assistance re-  
6 sources, including to avoid impairment of  
7 foreign assistance objectives, where such  
8 other country permits United States firms  
9 to compete for the procurement of similar  
10 commodities and services under its foreign  
11 assistance programs.

12           “(C) DELEGATION OF AUTHORITY.—With  
13 respect to determinations made by the agency  
14 primarily responsible for administering Part I  
15 (the ‘agency’), the authority to make determina-  
16 tions under subparagraph (B) shall—

17                   “(i) in the case of paragraph  
18 (2)(B)(i), not be delegated below the level  
19 of Mission Director, country representative  
20 or, with respect to determinations made in  
21 Washington, the responsible Assistant Ad-  
22 ministrator, as appropriate; and

23                   “(ii) in the case of paragraph  
24 (2)(B)(ii) with respect to procurement  
25 transactions exceeding \$100,000, not be

1 delegated below the level of Assistant Ad-  
2 ministrator and, where such procurement  
3 is at or below that amount, below the level  
4 of Mission Director or country representa-  
5 tive.

6 “(3) PROCUREMENT OF MOTOR VEHICLES.—

7 “(A) IN GENERAL.—None of the funds (in-  
8 cluding commodity import program assistance)  
9 made available to carry out this Act shall be  
10 used to finance the purchase, sale, long-term  
11 lease, exchange, or guaranty of a sale of motor  
12 vehicles unless such motor vehicles are manu-  
13 factured in the United States.

14 “(B) EXCEPTION.—Subparagraph (A)  
15 shall not apply where a determination is made  
16 that—

17 “(i) motor vehicles cannot be manu-  
18 factured in the United States to meet de-  
19 mands when time is of the essence;

20 “(ii) there is a projected lack of ade-  
21 quate spare parts and service facilities for  
22 United States manufactured vehicles,  
23 based on information provided by the Buy-  
24 America Advocate; or

1           “(iii) there are no United States man-  
2           ufacturers for export of the particular type  
3           of vehicle needed.

4           “(C) DETERMINATION.—With respect to  
5           determinations made by the agency under sub-  
6           paragraph (B), such determinations shall be in  
7           writing and, in the case of a determination to  
8           procure in excess of 10 vehicles per project or  
9           in excess of 5 vehicles for use by a field mis-  
10          sion, shall be made at a level not lower than the  
11          Assistant Administrator of such agency.

12          “(4) PRICE LIMITATION.—No funds made avail-  
13          able under this Act may be used for the purchase in  
14          bulk of any commodities at prices higher than the  
15          market price prevailing in the United States at the  
16          time of purchase, adjusted for differences in the cost  
17          of transportation to destination, quality, and terms  
18          of payment.

19          “(5) AGRICULTURE COMMODITIES.—

20                 “(A) IN GENERAL.—In providing for the  
21                 procurement of any agricultural commodity or  
22                 product available for disposition under the Agri-  
23                 cultural Trade Development and Assistance Act  
24                 of 1954 for transfer by grant under this Act to  
25                 any recipient country in accordance with its re-

1           quirements, the President shall, insofar as prac-  
2           ticable and when in furtherance of the purposes  
3           of this Act, authorize the procurement of such  
4           agricultural commodity only within the United  
5           States except to the extent that such agricul-  
6           tural commodity is not available in the United  
7           States in sufficient quantities to supply emer-  
8           gency requirements of recipients under this Act.

9           “(B) LIMITATION.—No funds made avail-  
10          able under this Act may be used for the pro-  
11          curement of any agricultural commodity or  
12          product thereof outside the United States when  
13          the domestic price of such commodity is less  
14          than parity, unless the commodity to be fi-  
15          nanced could not reasonably be produced in the  
16          United States in fulfillment of the objectives of  
17          a particular assistance program under which  
18          such commodity procurement is to be financed.

19          “(6) CONSTRUCTION AND ENGINEERING SERV-  
20          ICES.—Funds made available under this Act may be  
21          made available for the procurement of construction  
22          or engineering services from advanced developing  
23          countries eligible under the Geographic Code 941  
24          which have attained a competitive capability in inter-

1 national markets for construction services only if  
2 such country—

3 “(A) is receiving direct economic assistance  
4 under chapter 1 of part I or chapter 4 of part  
5 II of this Act, and

6 “(B) has its own foreign assistance pro-  
7 grams which finance the procurement of con-  
8 struction or engineering services and permits  
9 United States firms to compete for those serv-  
10 ices.

11 “(7) MARINE INSURANCE.—In providing assist-  
12 ance in the procurement of commodities in the Unit-  
13 ed States, United States dollars shall be made avail-  
14 able for marine insurance on such commodities  
15 where such insurance is placed on a competitive  
16 basis in accordance with normal trade practice pre-  
17 vailing prior to the outbreak of World War II. In the  
18 event a participating country, by statute, decree,  
19 rule, or regulation, discriminates against any marine  
20 insurance company authorized to do business in any  
21 State of the United States, then commodities which  
22 are purchased with funds provided under this Act  
23 and which are destined for such country shall be in-  
24 sured in the United States against marine risk with  
25 a company or companies authorized to do a marine

1 insurance business in any State of the United  
2 States.

3 “(c) NON-PROJECT ASSISTANCE.—

4 “(1) COMMODITY IMPORT PROGRAMS.—None of  
5 the funds made available to carry out chapters 1 and  
6 10 of part I and chapter 4 of part II of this Act may  
7 be used under any commodity import program to  
8 make any payment to a supplier unless the supplier  
9 has certified to the agency such information as such  
10 agency shall by regulation prescribe, including but  
11 not limited to, a description of the commodity sup-  
12 plied by the supplier, its condition, and its source  
13 and origin, and on the basis of such information  
14 such agency shall have approved such commodity as  
15 eligible and suitable for financing under this Act.

16 “(2) CERTAIN CASH TRANSFER PROGRAMS.—

17 “(A) RESTRICTIONS ON USE OF FUNDS.—  
18 Funds made available under cash transfers or  
19 similar programs pursuant to chapters 1 and  
20 10 of part I and chapter 4 of part II of this  
21 Act shall not be used to finance directly or indi-  
22 rectly, commodity import transactions unless  
23 such transactions meet agency requirements for  
24 United States source, origin, and nationality.

1           “(B) EXCEPTION.—Subparagraph (A)  
2 shall not apply where the proposed use of such  
3 funds to directly or indirectly finance trans-  
4 actions from countries other than the United  
5 States is approved by the responsible Assistant  
6 Administrator or higher-level official of the  
7 agency.

8           “(d) ANNUAL REPORT.—The Administrator of the  
9 agency shall submit an annual procurement report to Con-  
10 gress which—

11           “(1) details procurement by the agency of Unit-  
12 ed States commodities and services during the pre-  
13 ceding reporting period;

14           “(2) compares Buy-America procurement for  
15 the same period of the preceding year;

16           “(3) contains data for all agency activities that  
17 reflect the percentages of commodities and services  
18 financed by the agency that are of United States  
19 source or origin;

20           “(4) analyzes mission or bureau programs to  
21 identify shortfalls in performance in meeting Buy-  
22 America requirements contained in law and regula-  
23 tions; and

24           “(5) identifies remedial action to overcome such  
25 shortfalls.”.

1 (b) BUY-AMERICA ADVOCATE.—Part III of the For-  
2 eign Assistance Act of 1961 is amended by inserting after  
3 section 604 (as amended by this section) the following new  
4 section:

5 **“SEC. 604A. BUY-AMERICA ADVOCATE.**

6 “(a) DESIGNATION OF FUNCTIONS.—The Adminis-  
7 trator of the agency primarily responsible for administer-  
8 ing part I shall designate within the agency a Buy-Amer-  
9 ica Advocate for the purpose of fostering the participation  
10 of United States business in the development process. The  
11 Buy-America Advocate shall be a senior career employee  
12 of the agency and shall have experience in commodity im-  
13 port transactions and private enterprise activities. The  
14 Advocate shall report directly to the Administrator with  
15 respect to the responsibilities described in subsection (b).

16 “(b) RESPONSIBILITIES OF THE BUY-AMERICA AD-  
17 VOCATE.—The Buy-America Advocate shall have such re-  
18 sponsibilities and duties as the Administrator shall deter-  
19 mine including, in conjunction with other agency offices  
20 as appropriate—

21 “(1) to have access to and the authority to re-  
22 view all documentation involving procurement activi-  
23 ties of the agency;

24 “(2) to have full access to technical services and  
25 information involving procurement activities, par-

1 ticularly the procurement of commodities and the  
2 entering into of contracts, including all information  
3 provided under the Buy America Reporting System  
4 (BARS) or any successor system to BARS;

5 “(3) to review all programs involving cash  
6 transfers to determine whether a commodity import  
7 program would accomplish the same policy objectives  
8 as the cash transfer; any disagreement with a deter-  
9 mination by the Buy-America Advocate that the  
10 same policy objectives can be accomplished by a  
11 commodity import program shall, as appropriate, be  
12 resolved by the Administrator;

13 “(4) to receive and review all waiver actions ap-  
14 proved at the level of Assistant Administrator and,  
15 based on that review, to recommend to the Adminis-  
16 trator, as appropriate, any actions which may be  
17 necessary to ensure that Buy America procurement  
18 opportunities are maximized;

19 “(5) to develop and support general outreach  
20 activities with the United States business commu-  
21 nity, including procedures whereby interested United  
22 States contractors and suppliers can be apprised of,  
23 and encouraged to participate in, prospective pro-  
24 curement actions under this Act;

1           “(6) to coordinate its efforts with agency offi-  
2           cials who perform duties in the area of trade and in-  
3           vestment promotion and information; and

4           “(7) to assist in the preparation of the report  
5           required in section 604(d).

6           “(c) SUPPORT.—The Administrator shall ensure that  
7           the Buy-America Advocate is assisted by qualified staff  
8           and receives such other support, including access to all  
9           procurement documentation of the Agency, as may be nec-  
10          essary to carry out the responsibilities specified in this sec-  
11          tion.”.

12          (c) REPEALS.—Sections 496(n)(4) and 636(i) of the  
13          Foreign Assistance Act of 1961 are repealed.

14          **SEC. 6. OECD AGREEMENT.**

15          (a) IN GENERAL.—Not later than 180 days after the  
16          date of enactment of this Act, the Secretary of the Treas-  
17          ury shall submit a report to Congress on the agreement  
18          of the Organization for Economic Cooperation and Devel-  
19          opment (OECD) to restrict tied aid practices.

20          (b) CONTENT OF REPORT.—The report required by  
21          subsection (a) shall include—

22                  (1) the intentions and history of the agreement;

23                  (2) a review of efforts by other signatory na-  
24          tions to circumvent the OECD agreement;

