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B-113780 March 3, 1953

Number: B-113780

Date: 1953-03-03

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Honorable Eugene J. McCarthy House of Representatives

My dear Mr. McCarthy:

Reference is made to your letter of February 11, 1953, requesting to be advised whether the country of Japan may be considered to be allied with the United States in the current defense effort within the meaning of the exemption contained in section 1402 of the Supplemental Appropriation Act, 1953, Public Law 547, approved July 15, 1952. You state that you have been informed that under the above statute the employment by the legislative branch of the Government of aliens who are citizens of a country allied with the United States in the current defense effort is permissible.

In pertinent part, section 1402 of the cited statute provides:

"Unless otherwise specified and during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States * * * whose post of duty is in continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of this Act, who, being eligible for citizenship, had filed a declaration of intention to become a citizen of the United States prior to such date, or (3) is a person who owes allegiance to the United States * * *. This section shall not apply to citizens of the Republic of the Philippines or to nationals of those countries allied with the United States in the current defense effort."

In the absence of some authority designated by statute to determine which countries are allied with the United States in the current defense effort, this Office has held that the primary responsibility for making such determinations devolves upon the agency whose appropriation is involved. In that regard, a determination predicated upon reasonable grounds generally would not be questioned in the audit by the General Accounting Office.

For your information attention is invited to Article I of the Security Treaty between the United States and Japan ratified by the United States Senate on March 20, 1952, and by the President of the United States on April 15, 1952, which provides that:

"Japan grants, and the United States of America accepts, the right, upon the coming into force of the Treaty of Peace and of this Treaty, to dispose United

States land, air and sea forces in and about Japan. Such forces may be utilized to contribute to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance given at the express request of the Japanese Government to put down large-scale internal riots and disturbances in Japan, caused through instigation or intervention by an outside power or powers."

A determination on the basis of such provision that the country of Japan is allied with the United States in the current defense effort as contemplated by the status would not be questioned by this Office.

Sincerely yours,

Lindsay C. Warren Comptroller General of the United States