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The Honorable Doug Barnard, Chairman Commerce, Consumer, and Monetary Affairs Subcommittee Committee on Government Operations House of Representatives

Dear Mr. Chairman:

This responds to your request for a formal Comptroller General opinion on the authority of the Department of Commerce to establish and operate a fund to handle fees and other contributions paid by businesses and individuals for goods and services and for participating in Commerce sponsored trade shows and similar events. As you pointed out, this fund was variously known as the Reimbursable Fund, the ITA Deposit Fund or the Trust Fund. Unless otherwise indicated, for purposes of this opinion, we shall refer to it as the Deposit Fund.

The Deposit Fund was a consolidation of two former Commerce Department miscellaneous trust funds maintained by Commerce's International Trade Administration (ITA). One fund was established pursuant to provisions of the Mutual Educational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. Sec. 2451, and contained proceeds from registration fees charged to private parties participating in Commerce sponsored trade shows and exhibitions. The other fund consisted of collections of user fees charged recipients of special information products and services provided by the Commerce Department under authority of 15 U.S.C. Sec.(s) 1525 and 1526. In 1985' these two funds were merged into a single fund, the Deposit Fund. All receipts deposited into the Deposit Fund were commingled and deemed to be "contributions" authorized by section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961, 22 U.S.C. Sec. 2455 (f). Expenditures from the Deposit Fund were used to reimburse ITA's appropriation for operations and administration, /1/ which Commerce uses to initially bear the costs of providing information products and services and putting on trade shows and exhibits.

In 1987, Commerce's Inspector General issued a report on ITA's deposit fund accounts (Final Report On Inspection: Deposit Fund Accounts, International Trade Administration, Report No. OPEI-157, July 1987). We reviewed the Inspector General's report as part of the background for our opinion on Commerce's authority to establish and operate the Deposit Fund. Your request, together with the Inspector General's report, led us to two specific issues: (1) whether ITA had authority to collect and retain participation fees as "contributions" within section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961, to offset the costs of trade show events; and (2) whether ITA could properly characterize user fees, authorized by 15 U.S.C. Sec.(s) 1525 and 1526 and retained in the Deposit Fund, as "contributions" within section 105(f).

We conclude that prior to fiscal year 1990, it was not improper for Commerce to treat the registration fees as "contributions" which could he retained and used for Commerce-sponsored trade shows and exhibitions. Sections 105(f) and 108(c) of the Mutual Educational and Cultural Exchange Act of 1961, 22 U.S.C. Sec.(s) 2455(f) and 2458(c), authorized Commerce to retain and use proper "contributions" to defray the costs of trade shows and exhibitions. The act and its legislative history do not define "contributions." Nor do they provide any evidence that Congress intended "contributions" to include only payments that were purely donative or philanthropic in nature. Also, while private parties must pay the registration fee to participate in Commerce-sponsored activities, this is not inconsistent with a view of such registration fees as "contributions" since the fees are imposed for a special purpose and help bring about a specific result, i.e., the conduct of Commerce sponsored trade shows and exhibitions. Finally, Commerce had treated the registration fees as contributions for nearly 30 years without congressional disapproval. Accordingly, we conclude that Commerce had authority to retain those registration fees, and they were not required to be deposited into the Treasury as miscellaneous receipts. For fiscal year 1990, Congress incorporated language in the annual rider to Commerce's appropriations which defines "contributions" under section 105(f) of the act to include payments of assessments for services provided as part of Commerce-sponsored international trade activities authorized under the act. See Pub L. No. 101-62, Title I, Nov. 21, 1989, 103 Stat. 988, 990. There is nothing in the appropriation act or its legislative history to suggest that Congress viewed the addition of that language as a change in Commerce's authority to collect "contributions" as Commerce had interpreted that term.

The Inspector General's concern over Commerce's authority to retain and use the fees authorized by 15 U.S.C. Sec. 1525 and 1526 as "contributions" has been addressed by Commerce's reorganization of the Deposit Fund. In response to the Inspector General's report, Commerce reorganized the Deposit Fund by again splitting it into two separate funds: the Trade Event Deposit Fund for collections of participation fees, and the Information Product Deposit Fund for collections of user charges for information products and services. This action, together with proper accounting practices and procedures, should help ensure that the monies collected from user fee charges are used only to offset the costs of providing information products and services.

An analysis of our conclusions is at-ached. Please let us know if we can be of any further assistance.

Sincerely yours,

Milton J. Socolar Acting Comptroller General of the United States

Enclosure

ATTACHMENT

BACKGROUND

Prior to fiscal year 1985, the International Trade Administration (ITA) of the Department of Commerce maintained two miscellaneous trust funds for its export promotion activities: (1) the contributions, educational and cultural exchange trust fund (hereinafter referred to as the Contributions Fund) and (2) the

special studies, services, and projects trust fund (hereinafter referred to as the Special Studies and Projects Fund).

The Contributions Fund consisted of participation or registration fees received under exhibitor participation agreements from commercial exhibitors participating in Commerce sponsored trade and industrial exhibits, trade center shows, and other overseas trade promotions. The money was used to offset the costs of conducting these events. In 1970, Commerce expanded its exhibitor participation agreement to include additional fees "for use in funding market development, hospitality, and other promotional and operational costs of the Exhibition." "Hospitality" included receptions and entertainment, including entertainment in connection with activities other than the particular exhibit that generated the fee.

The Special Studies and Projects Fund consisted of receipts from collections from the sales of information products and services (i.e. market studies and analysis, trade reports, and special services) provided by Commerce upon request to the public. These monies were to be used to offset the costs of producing the products and services.

In fiscal year 1985, ITA replaced these two trust funds with a deposit fund called the contributions, educational and cultural exchange fund (variously known as the Reimbursable Fund, ITA Deposit Fund, or Trust Fund) /2/ in response to a directive from the Office of Management and Budget (OMB) to reduce the number of trust funds. The reposit Fund was used for deposits of both fees collected from commercial exhibitors participating in overseas trade promotion events and fees collected from the sale of information products and services. It was established as a revolving fund, and all collections placed in the Deposit Fund were considered to be contributions, available to offset the costs associated with overseas trade promotion events, domestic hospitality, and the production costs for information products and services. According to a report by the Inspector General of the Department of Commerce (Final Report On Inspection: Deposit Fund Accounts, International Trade Administration, Report No. OPEI-157, July 1987), about 75 percent of the Deposit Fund receipts were participation fees. The remaining 25 percent of receipts were collections of fees from the sale of information products and services. Domestic hospitality funds made up about one percent of the revenue collected from participation fees.

Although the Deposit Fund had its own Treasury account number, expenditures were not charged directly to it. They were charged instead to an ITA operations and administration account which then was reimbursed with monies from the Deposit Fund. Separate appropriation codes controlled receipts and expenditures from the Deposit Fund. There were two codes for expenditures: one for sales and trade promotion event expenses and one for domestic hospitality. The latter was used for expenses incurred within the United States for luncheons, dinners, and receptions that ITA deemed to be essential to further the promotion of international trade.

The Inspector General's report noted that ITA's authority to collect and retain participation fees as "contributions" to offset the costs of trade show events remained open to interpretation, and challenged ITA's classification of user fees as "contributions." The report also concluded that ITA policies and procedures for receipts and expenditures related to the Deposit Fund were lacking, and that additional controls and improvements were needed.

We reviewed the Inspector General's report as part of the background for our opinion on Commerce's authority to establish and operate the Deposit Fund. The Chairman's request, together with the Inspector General's report, led us to two specific issues: (1) whether ITA had authority, prior to fiscal year 1990, to collect and retain participation fees as "contributions" within section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961, to offset the costs of trade show events; and (2) whether ITA could properly characterize user fees, authorized by 15 U.S.C. Sec.(s) 1525 and 1526 and retained in the Deposit Fund, as "contributions" within section 105(f).

STATUTORY BASIS FOR DEPOSIT FUND

The Mutual Educational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. Sec.(s) 2451 et seq., in the interest of improving international relations, authorizes a wide variety of international transactions and interchanges. Section 102(a)(3) of the act authorizes United States participation in or the conduct of international trade fairs and commercial exhibitions overseas. 22 U.S.C. Sec. 2452(a)(3). Executive Order 11034, dated June 25, 1962, delegated to the Commerce Department authority to conduct trade shows in foreign countries. The 1961 act also encouraged the involvement of nongovernmental entities in carrying out the act. Section 105(f) of the act provides in the first sentence:

"(f) Foreign governments, international organizations and private individuals, firms, associations, agencies, and other groups shall be encouraged to participate to the maximum extent feasible in carrying out this act and to make contributions of funds, property, and services which the President is authorized to accept, to be utilized to carry out the purposes of this act."

22 U.S.C. Sec. 2455(f).

Section 108(c) of the act provides:

"(c) In connection with activities authorized by section 102(a)(2) and (3) [22 U.S.C. Sec. 2452(a)(2) and (3)] of this act, the President is authorized to provide for all necessary expenditures involved in the selection, purchase, rental, construction, or other acquisition of exhibits and materials and equipment thereof, and the actual display thereof, including but not limited to costs of transportation, insurance, installation, safekeeping and storage, maintenance and operation, rental of space, and dismantling."

22 U.S.C. Sec. 2458(c).

The executive order did not delegate to Commerce the authority to accept contributions, but, since fiscal year 1962, the authority in the first sentence of section 105(f) has been extended to Commerce in its annual appropriation acts under ITA's operations and administration appropriation account. See, e.g., Pub. L. No. 87-125, 75 Stat. 268. Commerce's fiscal year 1987 appropriation act contains substantially similar language to past years' ITA appropriations. In this regard, section 101(b) of the Joint Resolution, Act of October 16, 1986, Pub. L. No. 99-500, 100 Stat. 1783-39, 1783-41, provides:

"For necessary expenses for international trade activities of the Department of Commerce, including trade promotional activities abroad . . . $197,500,000, to remain available until expended . . . Provided, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational

and Cultural Exchange Act of 1961 (22 U.S.C. Sec.(s) 2455(f) and 2458(c)) shall apply in carrying out these activities."

The Commerce Department's fiscal year 1988 appropriation act incorporates the previous years' annual ITA appropriation rider referencing the Mutual Educational and Cultural Exchange Act of 1961, permitting the collection of contributions for trade promotion purposes by ITA and for export administration activities by the Bureau of Export Administration. /3/ In this regard, section 101(a) of the Joint Resolution, Act of December 22, 1987, Pub. L. No. 100202, 100 Stat. 1329, 1329-3, provides:

"International Trade Administration Operations and Administration

"For necessary expenses for international trade activities of the Department of Commerce, including trade promotional activities abroad . . . $161,432,000 to remain available until expended . . . . Provided, that the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. Sec.(s) 2455(f) and 2458(c)) shall apply in carrying out these activities.

"Export Administration Operations and Administration

"For necessary expenses for export administration and national security activities of the Department of Commerce . . . $37,465,000, to remain available until expended: Provided, that the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. Sec.(s) 2455(f) and 2458(c)) shall apply in carrying out these activities."

The Commerce Department's fiscal year 1990 appropriation act expressly incorporates language in the annual rider to the ITA appropriation which defines "contributions" under section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961, to include payments of assessments for services provided as part of Commerce-sponsored international trade activities authorized under the act. In this regard, Title I of Pub. L. No. 101-162, Nov. 21, 1989, 103 Stat. 988, 990, provides:

"For necessary expenses for international trade activities of the Department of Commerce provided by law, and including demonstrating new alternatives to providing services domestically and engaging in trade promotional activities abroad . . . $181,296,000, to remain available until expended . . . . Provided, that the provisions of the first sentence of section 105(f) and all of section 108(c) shall apply in carrying out these activities; and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payments of assessments for services provided as part of these activities . . . ."

(Emphasis added.)

ANALYSIS

In general, the provisions of the Mutual Educational and Cultural Exchange Act of 1961 and Commerce's appropriation acts authorize Commerce to maintain legitimate section 105(f) contributions and appropriations in a properly established fund or account. As noted above, section 105(f) authorizes the

acceptance of contributions in carrying out activities involving trade promotion events, while section 108(c) authorizes provision of all necessary expenses in connection with such activities. Commerce's appropriation acts provide that ITA's operations and administration appropriation covering trade promotion activities are "to remain available until expended . . . ." See Joint Resolution, Act of October 16, 1986, Pub. L. No. 99-500, 100 Stat. 1783-39, 1783-41. See also, Joint Resolution, Act of December 22, 1987, Pub. L. No. 100-202, 100 Stat. 1329, 1329-3.

We believe these statutory provisions provide sufficient authority for Commerce to have established and maintained the Contributions Fund for legitimate section 105(f) contributions, and subsequently to have retained such contributions in the Deposit Fund. For the reasons discussed below, we conclude that it was not improper for Commerce, prior to fiscal year 1990, to treat registration fees as "contributions." Accordingly, to the extent that both the Contributions Fund and the Deposit Fund had consisted of registration fees for trade promotion events, Commerce's use of those funds as contributions was not improper. In addition, the situation involving Commerce's characterization of user fees which had been retained in the Deposit Fund as section 105(f) contributions has been rectified. Since the subsequent reorganization of the Deposit Fund into separate funds for collections of registration fees and collections of user fees, the user fees are no longer treated by Commerce as contributions. This action, together with proper accounting practices and procedures for receipts and expenditures from these funds should help ensure that user fees are being properly accounted for, and are being used to cover costs incurred only in connection with providing information products and services.

Registration Fees Constitute Section 105(f) Contributions

When reviewing an agency's construction of a statute it administers, the first question is whether Congress has directly spoken to the precise issue at hand. Chevron U.S.A. v. Natural Resource Defense Council, 467 U.S. 837, 842 (1985). If the intent of Congress is clear, effect must be given to Congress' unambiguously expressed intent. Id. at 842-843. However, if the statute is silent or ambiguous and the agency has adopted a permissible construction of the statute, a court may not substitute its own construction of a statutory provision for an otherwise reasonable agency interpretation. Id. at 833-844.

Commerce takes the view that the word "contributions" as used in section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961 is broad enough to include registration fees required of participants and exhibitors at Commerce-sponsored trade shows. In support of this view, Commerce relies on an informal discussion with GAO attorneys in 1959 concerning the predecessor of section 105(f) of the 1961 act. That discussion was summarized in a 1970 memorandum from Commerce's office of General Counsel as follows: /4/

"(1) Although the 1956 statute stated that industry participation and contributions were to be 'encouraged,' the payments or fees which the exhibitors were required to agree to make as a condition precedent to their participation in the exhibition fell within the spirit and intent of 'contributions' under the statute (now section 105(f)); (2) the written participation agreement should not be cast in terms of a lease or rental arrangement; (3) contributions could vary measured by exhibition spar? to be occupied; (4) the contributions to defray exhibit costs were appropriate to carry out the basic legislation; and (5) as gifts specifically authorized by statute, they would be available for

reimbursement of the appropriation." /5/

The word "contributions" as used in section 105(f) is not specifically defined in the 1961 act. Nor have we found any legislative history addressing the meaning of the term as it was used in the 1961 act. Hence, the issue is whether

Commerce has adopted a permissible construction of the term in light of the language and purpose of the statute. We conclude that Commerce's interpretation is not an impermissible construction of the statute.

"Contributions" is not a term of art with a specific, commonly understood meaning. Rather, it is a general word of description encompassing not only "gifts" or "donations" of a more or less voluntary nature, but also fees, assessments, or levies imposed by governmental authorities to further a particular end or result, often in common with others. Webster's Ninth New Collegiate Dictionary 285 (1985) (defining "contribute," "contribution," and "contributory"). Also, Congress has used 'contribute'' and "contributions" in various other statutes to describe mandatory payments by persons or governments for specific purposes. E.g., 5 U.S.C. Sec.(s) 8334, 8348, 10 U.S.C. Sec. 1466 (requiring government payments to fund employee retirement benefits); 5 U.S.C. Sec. 8906 (requiring government payments to finance employee health benefits); 7 U.S.C. Sec. 1445-l(d) (requiring payments by tobacco producers as a condition for eligibility for price support); 33 U.S.C. Sec. 1293a (requiring states to pay a percentage of costs of certain facilities constructed by the federal government); 42 U.S.C. Sec. 1437c (authorizing the Secretary of Housing and Urban Development to enter into contracts for annual contributions to public housing agencies). Finally, courts have used the word "contribution" to describe mandatory payments such as taxes, /6/ and have described payments which statutes call contributions as taxes, dues, and assessments. /7/ Thus, it is clear that legislatures and courts have not limited their use of the word "contributions" to describe voluntary or philanthropic payments.

Apart from the support for Commerce's interpretation derived from an analysis of the operative statutory term, Commerce's interpretation is consistent with the purpose of section 105(f). Section 105(f) directs Commerce "to encourage" participation and financial contributions to defray the expenses of carrying out the purposes of the 1961 act. A construction of "contributions" to include registration fees required as a precondition for participation no more offends the purpose of section 105(f) than a narrower construction that includes only purely voluntary gifts. Indeed, since 15 U.S.C. Sec. 1522 authorizes Commerce to accept and utilize gifts to aid or facilitate its work, a narrow construction substantially limits, if not negates, the usefulness of section 105(f). Thus, as a practical matter, Commerce's interpretation arguably furthers the purpose of section 105(f).

Our only decision considering section 105(f) that may suggest a contrary result, B-89294, Aug. 6, 1963, is distinguishable. Shortly after the 1961 act was passed, we analyzed an agreement between United Artists Corporation and the United States Information Agency (USIA) to produce and domestically distribute a film made from clips of USIA films first produced for overseas distribution. The agreement specified that, after full cost recovery by United Artists and a 2-year period of exclusive distribution rights, any further revenues generated by United Artists from commercial domestic showings of the film were to be turned over to USIA or applied to USIA's overseas creditors at its direction.

We decided that the net proceeds from the film, which were to go to USIA, were not "contributions" under section 105(f). In the absence of any definitive legislative history to the contrary, we concluded that "contributions" were not intended to encompass net proceeds payable under such a contractual arrangement.

The decision did not offer a specific definition of "contributions" under the 1961 act. Rather, B-89294 concluded that "contributions" do not extend to "amounts paid pursuant to [the USIA/United Artists] contractual arrangements," such arrangements being for a commercial activity by a private company with USIA sharing in the net proceeds. There was no relationship between the commercial activity being conducted from which USIA received a share of the net proceeds or profits, and the sponsoring and conduct of trade shows at which the section 105(f) contributions were directed. Conversely, the contractual arrangement between Commerce and the exhibitors requires payment to the government of registration fees as a condition precedent to participation in Commerce-sponsored activities. Such fees are not the type of contractual, profit-sharing payments specifically excluded from the coverage of "contributions" by B-89294.

Finally, Commerce had maintained the Deposit Fund and its predecessor funds as reimbursable accounts for almost 30 years. Commerce's General Counsel's Office notes that Commerce's use of those funds and its interpretation of the word "contributions" over the years had been well known to its congressional committee. It concludes that by enacting the specific rider every year to permit the collection and use of "contributions" for trade purposes, Congress had ratified Commerce's actions with respect to the Deposit Fund.

The Congress may ratify that which it could have authorized. Swayne & Hoyt v. United States, 300 U.S. 297, 301-302 (1937). Furthermore, this ratification may be effected through appropriation acts. Greene v. McElroy, 360 U.S. 474 (1959); Brooks v. Dewar, 313 U.S. 353, 361 (1941); Isbrandsten-Moller Co. v. United States, 300 U.S. 297, 301302 (1937). Generally, the action ratified is taken by the agency pursuant to at least arguable authority and the Congress has specific knowledge of the facts. Further, the appropriation of funds clearly bestows the precise authority which is claimed. Ex Parte Endo, 323 t].S. 283, 303 n. 24 (1944); D.C. Federation of Civic Associations, Inc. v. F. Aires, 391 F. 2d 478, 481 (D.C. Cir., 1968); Wade v. Lewis, 561 F. Supp. 913, 944 (AD. Ill., 1983). However, the fact that a lump-sum appropriation was made for an overall program or activity, does not serve as a ratification of every phase of the program or activity. Ex Parte Endo, supra; Wade v. Lewis, supra. The appropriation must plainly show a purpose to bestow the precise authority which is claimed. Ex Parte Endo, supra; Wade v. Lewis, supra.

We reviewed a number of pre-fiscal year 1990 appropriation acts which incorporated the language of section 105(f) of the 1961 act, and the legislative histories of those acts support Commerce's position that its use of exhibitor participation fees and its interpretation of the term "contributions" over the years had been well-known to the congressional appropriations committees. Information regarding Commerce's position on this issue had been repeatedly disclosed in appropriations hearings. As far back as 1964, Commerce notified Congress that Commerce was charging exhibitor participation fees, and was characterizing them as "contributions." See Hearings before the Subcommittee on State, Justice, and Commerce, the Judiciary, and Related Agencies of the Senate Committee on Appropriations, 88th Cong., 1st Sess. (1964), pp. 1548, 1550, and 1553. Recently, the issue was expressly addressed by Commerce during

consideration of its fiscal year 1988 budget. In response to written questions submitted by the subcommittee chairman, Senator Hollings, Commerce explained that it construed fees paid by participants in Commerce sponsored trade shows and other activities as "contributions" within the meaning of the 1961 act. It stated that it has interpreted the 1961 act to permit ITA to collect "mandatory contributions" from exhibitors to carry out ITA's programmatic responsibilities. See Hearings before the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the Senate Committee on Appropriations, 100th Cong., 1st Sess. Pt. 1 (1987), pp. 395-396.

Commerce had periodically informed Congress that it interpreted "contributions" as used in the annual rider to its appropriations to include the participation fees, and that it intended to continue doing so. While Congress, prior to fiscal year 1990, had never expressly incorporated language adopting Commerce's interpretation of "contributions" into the annual rider, the related appropriation acts were enacted with at least some congressional knowledge that Commerce intended to use the appropriated funds and proceeds from the participation fees to carry out activities consistent with its interpretation of "contributions".

As noted earlier, an agency's interpretation, particularly a long-standing one, made known to Congress over the years, should not be upset unless clearly inconsistent with the act's language and purpose. Hence, since, in our opinion, "contributions" is broad enough to include registration fees, we cannot say that Commerce's interpretation is clearly inconsistent with the operative language of the 1961 act. It is significant that Commerce's fiscal year 1990 appropriation act expressly incorporates language in the annual rider to the ITA appropriation which defines "contributions" under the 1961 act to include payments of assessments for services provided as part of Commerce sponsored international activities authorized under the act. There is nothing in the fiscal year 1990 appropriation act or its legislative history to suggest that Congress viewed the addition of that language as a change in Commerce's authority to collect "contributions" as it had interpreted that term. Accordingly, we conclude it was not improper for Commerce to have treated registration fees as contributions under section 105(f) and to have retained and used those fees to defray the costs of trade promotion events.

SECTION 1525 USER FEES NO LONGER TREATED AS SECTION 105(f) CONTRIBUTIONS

We agree with Commerce that 15 U.S.C. Sec.(s) 1525 and 1526 provide it with authority to charge for information products and services and to retain the monies collected to offset its costs. /8/

Section 1525 provides:

"The Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work."

Section 1526 provides:

"All payments for work or services performed or to be performed under this act shall be deposited in a separate account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary: Provide_ that said receipts may be credited to a working capital fund otherwise established by law, and used under the law governing said funds, if the fund is available for use by the agency of the Department of Commerce which is responsible for performing the work or services for which payment is received. Acts appropriating funds to the Department of Commerce may include provisions limiting annual expenditure from said account or accounts." /9/

We believe that 15 U.S.C. Sec.(s) 1525 and 1526 authorized the original Special Studies and Projects Fund. Those provisions clearly permit Commerce to collect the fees in question and to establish an account for retention and use of those fees to cover the costs of the products and services provided.

As noted earlier, the Deposit Fund, in replacing the Contributions Fund and the Special Studies and Projects Fund, received all collections of participation fees and section 1525 user fees, and considered all such collections as "contributions". Commerce used these funds to reimburse the appropriations from which initial outlays were made in providing information products and services and for trade show events. However, Commerce's Inspector General had taken the position that section 1525 user fees should not have been characterized as contributions. It pointed out that until 1985, ITA officials recognized collections for information products and services as user charges. It also noted that designating them as contributions and commingling them with registration fees had resulted in a situation where there was no assurance that section 1525 fees were being used only for the purposes specified in 15 U.S.C. Sec. 1526, since there was no correlation between collections and expenditures from the Deposit Fund.

Commerce's subsequent reorganization of the Deposit Fund into two separate funds addresses the concerns raised by its Inspector General. Through information recently obtained from Commerce regarding activities involving these funds, we were able to verify that ITA, as a result of the Inspector General's report, split the Deposit Fund into the Trade Event Deposit Fund for collections of participation fees, and the Information Product Deposit Fund for collections of user charges for information products and services. These funds are maintained separately in ITA through the use of internal agency codes, and a separate account for each fund is maintained with Treasury. Monies are collected and deposited into each account and are used to cover costs incurred only in connection with the respective activity for which each fund was established. For budget and financial reporting purposes, the two funds are merged with ITA's operations and administration appropriation under a single Treasury code. Disbursements for activities relating to either the Trade Event Deposit Fund or the Information Product Deposit Fund are originally made from the operations and administration account. Each deposit fund account is subsequently charged for disbursements from the operations and administration account for activities related to the respective fund, and a corresponding reimbursement is made from the fund account to the operations and administration account. We believe this arrangement, together with proper accounting procedures and controls, should ensure that user fees are being properly accounted for and are being used to cover costs incurred only in connection with providing information products and services.

1. As of October 1, 1987, the Bureau of Export Administration was established in the Department of Commerce as an entity separate from ITA. Export Administration now performs the functions of export promotion and control as mandated by the Export Administration Act, as amended, 50 U.S.C. App. Sec. 2401 et seq. The Commerce Department fiscal year 1988 appropriation act establishes a separate Export Administration appropriation for operations and administration which also permits the Export Administration to collect and use contributions authorized by the 1961 act for export promotion purposes.

2. For purposes of this opinion, unless otherwise indicated, we will refer to this fund as the Deposit Fund.

3. As of October 1, 1987, the Bureau of Export Administration (EA) was established in the Department of Commerce as an entity separate from ITA. The EA now performs the functions of export promotion and export control as mandated by the Export Administration Act, as amended, 50 U.S.C. App. Sec. 2401 et seq.

4. Memorandum dated November 6, 1970, from Assistant General Counsel Alfred Meisner to Deputy Assistant Secretary for Administration, Lawrence E. Imhof If.

5. Section 4 of the International Cultural Exchange and Trade Fair Participation Act of 1956, Pub. L. No. 85-860, 70 Stat. 778, the predecessor to section 105(f), also encouraged private "contributions" of funds for United States participation in international fairs and exhibitions. The 1956 act did not define the term "contributions," and we found no definitive legislative history regarding the meaning of that term as it was used in the 1956 statute.

6. E.g., Houck v. Little River Drainage District, 239 U.S. 254, 256 (1915) ("A tax is an enforced contribution for the payment of public expenses.")

7. In re American Co., 31 F. Supp. 601, 604 (S.D. Ill. 1939); In re Oshkosh Foundry Co., 28 F. Supp. 412, 414 (S.D. Ohio 1939); Waterburg Sav. Bank v. Danaher 128 Conn. 78, 20 A. 2d 455, 459-460 (1941).

8. Under Pub. L. No. 91-412, 84 Stat. 864, Congress repealed a number of conflicting and overlapping statutes which had authorized Commerce to perform services for other government agencies and the public on a cost basis, and substituted for those statutes General uniform authority in 15 U.S.C. Sec.(s) 1525 and 1526 to charge for special studies and services. Sections 1525 and 1526 constitute a "user charge" statute, and contemplate that the services provided thereunder should be self-sustaining. See B-180618, Nov. 4, 1974.

9. As far as we can determine, Commerce has not established a working capital fund as referred to in 15 U.S.C. Sec. 1526. Moreover, Commerce did not justify its receipt and disposition of section 1525 fees pursuant to the first proviso of section 1526.