MR. [WRIGHT] PATMAN [of Texas]: Mr. Chairman, I make a point of order against the language starting at the end of line 10, page 28, reading "$300,000 shall be available as the President may direct for a special study of the compensation and pensions program."

MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I concede the point.

THE CHAIRMAN:[18] The Chair is ready to rule. This is obviously legislation on an appropriation bill, and the point of order is sustained.

§ 56. Determination of National Interest

Military Assistance; Presidential Determination and Report

§ 56.1 In a paragraph of a foreign aid appropriation bill providing funds for military assistance, language prohibiting use of those funds for the furnishing of sophisticated weapons systems to certain countries "unless the President determines that the furnishing of such weapons systems is important to the national security of the United States and reports within thirty days each such determination to the Congress" was ruled out as legislation on an appropriation bill in violation of Rule XXI clause 2.

On June 4, 1970,[19] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

MILITARY ASSISTANCE

Military assistance: For expenses authorized by section 504(a) of the Foreign Assistance Act of 1961, as amended, including administrative expenses and purchase of passenger motor vehicles for replacement only for use outside of the United States, $350,000,000: *Provided,* That none of the funds contained in this paragraph shall be available for the purchase of new automotive vehicles outside of the United States: *Provided further,* That none of the funds appropriated in that paragraph shall be used to furnish sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, the Republic of China, the Philippines, and Korea, unless the President determines that the furnishing of such weapons systems is important to the national security of the United States and reports within thirty days each such determination to the Congress: *Provided further,* That the military assistance program for any country shall not be increased beyond twenty per centum of the amount justi-

18. Albert Rains (Ala.).

19. 116 CONG. REC. 18400, 18401, 91st Cong. 2d Sess.

fied to the Congress, unless the President determines that an increase in such program is essential to the national interest of the United States and reports each such determination to the House of Representatives and the Senate within thirty days after each such determination: *Provided further,* That the Excess Defense Articles program for any country shall not be increased beyond twenty per centum of the amount presented to the Congress.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I make a point of order against the language of the proviso contained in lines 1 through 9 on page 6. This is patently legislation in an appropriation bill. It is not a limitation of funds. It does direct the Executive that funds cannot be appropriated for or furnished to support sophisticated weapons, with certain exceptions listed.

Mr. Chairman, similar provisions and restrictions are contained in sections 504 and 520(s) of the Foreign Assistance Act, and also section 35 of the Military Sales Act.

Therefore, Mr. Chairman, I say this is legislation on an appropriation bill and is unnecessary because of similar provisions in the Authorization Act.

THE CHAIRMAN:[20] Does the gentleman from Louisiana desire to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I desire to be heard.

The committee felt this to be a limitation, because the words "none of the funds appropriated . . . shall be used" appear in this paragraph.

This provision was added by the committee to the foreign assistance appropriation bill for fiscal year 1968 in order to stop underdeveloped countries from buying sophisticated weapons systems with U.S. grant-aid funds. The provision was subsequently modified to encourage countries away from arms races. We believe it is a limitation and we ask for a ruling.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I desire to be heard on the point of order.

This is an amendment that I had offered and it has been in the bill for 4 years now. I believe it comes within the Holman rule. It is a retrenchment of Federal expenditures. It is negative in nature. It is germane, and I do not see where it imposes any addition or affirmative duties on anyone. I think the point of order should be ruled against.

THE CHAIRMAN: The Chair is prepared to rule.

On September 20, 1966, a point of order was sustained against language which was contained in a foreign aid appropriation bill prohibiting aid to any nation that sells or permits ships on its registry to transport cargo to North Vietnam and containing the phrase "unless the President determines." The important language there is "unless the President determines." The language here appears to be identical, and the Chair sustains the point of order.

Economic Assistance; Presidential Determination and Report

§ 56.2 Language in a general appropriation bill directing

20. Hale Boggs (La.).

the President to withhold economic assistance to certain countries in an amount equivalent to that spent by those countries for sophisticated military equipment, unless the President determines and reports to Congress that such expenditures are important to the security of the United States, was ruled out as legislation in violation of Rule XXI clause 2.

On June 4, 1970,[1] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Sec. 119. The President is directed to withhold economic assistance in an amount equivalent to the amount spent by any underdeveloped country for the purchase of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes from any country other than Greece, Turkey, the Republic of China, the Philippines, and Korea, unless the President determines that such purchase or acquisition of weapons systems is important to the national security of the United States and reports within thirty days each such determination to the Congress.
>
> MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I make a point of order against the language on page 14, lines 13 to 22, section 119, that this is clearly legislation on an appropriation bill.
>
> It is a good provision, again, but it has no legitimate place in an appropriation bill, especially when even stronger restrictions are already contained in section 520(s) of the existing Foreign Assistance Act. . . .
>
> MR. [CLARENCE D.] LONG of Maryland: . . . This amendment is in the nature of a limitation which would withhold an equivalent amount of aid in cases where underdeveloped countries otherwise recipients of U.S. aid undertake to make purchases of sophisticated weapons systems with their own funds. This limitation applies solely to the appropriation under consideration and does not operate beyond the fiscal year in which the appropriation is made. . . . Under the rules and precedents, limitations may be written into appropriations bills. As Chairman Dingley, of Maine, wrote in 1896:
>
> > The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.
>
> Asher C. Hinds, clerk to the Speaker from 1881 until 1891, and editor of the "Rules, Manual and Digest" of the House of Representatives in 1899, and of "Hinds' Precedents" in 1908:
>
> > Thus the power of limitation is solely a negative power, capable of setting up a barrier, and not a positive power, capable of creative func-

1. 116 CONG. REC. 18408, 91st Cong. 2d Sess.

tions. The appropriation may interfere with Executive discretion only in a negative way. It may decline to appropriate for ships to be built in a navy yard by saying that no part of the appropriation shall be used for that purpose. These negative prohibitions are within the power of the appropriation bill.

In the past, limitations have prohibited such measures as the payment of troops stationed in certain geographical locations, the appropriations for repair of vessels in private shipyards, and appropriations for the return of a Reserve Force to active duty—Cannon's Precedents.

THE CHAIRMAN:[2] The Chair finds the precedent cited is not germane. Section 119 as it is now drafted reads as follows:

> The President is directed to withhold economic assistance in an amount equivalent to the amount spent by any underdeveloped country—

And again on line 19 it says—

> unless the President determines that such purchase or acquisition of weapons systems is important to the national security of the United States and reports within 30 days each such determination to the Congress.

It is obviously legislation in an appropriation bill, and the Chair sustains the point of order.

§ 56.3 Language in a general appropriation bill prohibiting the furnishing of economic assistance under the Foreign Assistance Act of 1961 to Communist Nations, unless the President determines that withholding such aid would jeopardize the national security, reports that determination to Congress and publishes it in the Federal Register, was held similar but not identical to the prohibition contained in the authorizing legislation and was therefore ruled out as imposing additional duties on the President.

On June 4, 1970,[3] during consideration in the Committee of the Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> (b) No economic assistance shall be furnished to any nation, whose government is based upon that theory of government known as communism, under the Foreign Assistance Act of 1961, as amended (except section 214(b)), unless the President determines that the withholding of such assistance would be contrary to the national interest and reports such determination to the House of Representatives and the Senate. Reports made pursuant to this subsection shall be published in the Federal Register within seven days of submission to the Congress and shall contain a statement by the President of the reasons for such determination.

2. Hale Boggs (La.).

3. 116 CONG. REC. 18405, 91st Cong. 2d Sess.

MR. [DONALD M.] FRASER [of Minnesota]: Mr. Chairman, I rise to make a point of order.

THE CHAIRMAN:[4] The gentleman will state his point of order.

MR. FRASER: Mr. Chairman, I make a point of order against section 109, paragraph (b). The provision forbids any economic assistance to Communist countries. As with reference to the previous paragraph, this one is duplicative of section 620(f). In fact, it is far less precise than the provision contained in the authorizing legislation. Therefore, I make the point of order that the language in section 109, paragraph (b) constitutes legislation in an appropriation measure.

THE CHAIRMAN: Does the gentleman from Louisiana wish to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I ask for a ruling.

THE CHAIRMAN: The Chair is prepared to rule.

The language is similar but is not identical to the Foreign Assistance Act of 1961. It imposes new duties upon the President of the United States and as such clearly falls within the prohibition of rule XXI, clause 2.

The Chair sustains the point of order.

Parliamentarian's Note: The provisions of the authorizing legislation stated:

(f) No assistance shall be furnished under this chapter, as amended, (except section 2174(b) of this title) to any Communist country. This restriction may not be waived pursuant to any authority contained in this chapter unless the President finds and promptly reports to Congress that: (1) such assistance is vital to the security of the United States; (2) the recipient country is not controlled by the international Communist conspiracy; and (3) such assistance will further promote the independence of the recipient country from international communism. For the purposes of this subsection, the phrase "Communist country" shall include specifically, but not be limited to, the following countries: Peoples Republic of Albania, Peoples Republic of Bulgaria, Peoples Republic of China (and other named countries).

See Public Law No. 87–195 as amended by Public Law No. 87–565, § 301(d)(3).

No Aid to United Arab Republic Unless President Determines

§ 56.4 A provision in a foreign aid appropriation bill prohibiting assistance under that bill for the United Arab Republic "unless the President determines that such availability is essential to the national interest of the United States" was held to be legislation and was ruled out on a point of order.

On June 4, 1970,[5] during consideration in the Committee of the

4. Hale Boggs (La.).

5. 116 CONG. REC. 18406, 91st Cong. 2d Sess.

Whole of the foreign assistance appropriation bill (H.R. 17867), a point of order was raised against the following provision:

The Clerk read as follows:

Sec. 117. None of the funds appropriated or made available in this Act for carrying out the Foreign Assistance Act of 1961, as amended, shall be available for assistance to the United Arab Republic, unless the President determines that such availability is essential to the national interest of the United States. . . .

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN:[6] The gentleman will state the point of order.

MR. ZABLOCKI: Mr. Chairman, I make the point of order against section 117 on the ground that it constitutes legislation in an appropriation bill.

It is almost identical with the prohibitions contained in section 620(p) of the existing Foreign Assistance Act.

THE CHAIRMAN: The Chair is prepared to rule.

The language on page 13, line 19, "unless the President determines," is clearly legislation on an appropriation bill and clearly violates clause 2 of rule XXI.

The Chair sustains the point of order.

Nations Assisting Cuba; No Aid Unless President Determines

§ 56.5 Language in a general appropriation bill which specifies that no part of funds therein shall be available to nations providing assistance to the Castro regime in Cuba "unless the President determines that the withholding . . . would be contrary to the national interest" was held to impose additional burdens on the Chief Executive and was ruled out as legislation.

On Sept. 20, 1962,[7] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 13175), the following point of order was raised:

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 6, line 17, as follows: "unless the President determines that the withholding of such assistance to such country would be contrary to the national interest."

THE CHAIRMAN:[8] The gentleman will state the point of order.

MR. GROSS: Mr. Chairman, I make a point of order against the language I have just read on the ground that it is legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Louisiana desire to be heard on the point of order?

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Chairman, I ask for a ruling on the point of order.

THE CHAIRMAN: The language referred to by the gentleman from Iowa

6. Hale Boggs (La.).

7. 108 CONG. REC. 20181, 87th Cong. 2d Sess.

8. Wilbur D. Mills (Ark.).

against which he makes his point of order does impose additional burdens upon the President and is therefore legislation on an appropriation bill.

The point of order is sustained.

Nations Dealing With Cuba or North Vietnam; No Aid Unless President Determines

§ 56.6 Language in a foreign aid appropriation bill prohibiting aid (not merely limiting funds in the bill) to any nation which permits ships under its registry to carry cargo to Cuba or North Vietnam unless the President determines that withholding of assistance would be contrary to the national interest and reports such determination to Congress, was conceded to be legislation and ruled out on a point of order.

On Sept. 20, 1966,[9] during consideration in the Committee of the Whole of the foreign aid appropriation bill (H.R. 17788), a point of order was raised against the following provision:

THE CHAIRMAN:[10] The Clerk will read.

The Clerk read as follows:

(b) No economic assistance shall be furnished under the Foreign Assistance Act of 1961, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam, unless the President determines that the withholding of such assistance would be contrary to the national interest and reports such determination to the Foreign Relations and Appropriations Committees of the Senate and the Foreign Affairs and Appropriations Committees of the House of Representatives. Reports made pursuant to this subsection shall be published in the Federal Register within seven days of submission to the committees and shall contain a statement by the President of the reasons for such determination.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 8, beginning with line 8, and running through line 22.

THE CHAIRMAN: The gentleman will state his point of order.

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 8, beginning with line 8 and running through line 22, as being legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Louisiana [Mr. Passman] desire to be heard on the point of order?

MR. [OTTO E.] Passman: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The gentleman from Louisiana concedes the point of order.

The Chair sustains the point of order.

9. 112 CONG. REC. 23265, 23266, 89th Cong. 2d Sess.

10. Charles M. Price (Ill.).

Procurement From Foreign Firms; Waiver of Restriction by President

§ 56.7 To a bill making appropriations for the Department of Defense, an amendment denying the use of funds appropriated or made available by the bill for procurement from foreign firms which receive government subsidies thereby constituting unfair competition, but permitting the President to waive such restriction in the national interest with prior notice to Congress was held to be legislation (imposing additional duties) and was ruled out on a point of order.

On Sept. 12, 1968,[11] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 18707), a point of order was raised against the following amendment:

> MR. [DURWARD G.] HALL [of Missouri]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Hall: On page 44, after line 14, add a new section 542, as follows:
>
> ". . . None of the funds which are appropriated or made available for expenditure by this Act for the procurement of aircraft or major components thereof, shall be expended outside the United States in any instance with a foreign firm which is the recipient of direct foreign government products development support, which would constitute unfair competition for any United States firm which has a similar product, capability, or proposal. This limitation is waived for continuing prior year's procurement actions; and further, this limitation may be waived on determination of necessity in the national interest by the President on prior notification of the House and Senate."
>
> And renumber the subsequent section accordingly. . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I rise to make a point of order, regretfully, because I have the highest esteem for the gentleman from Missouri.

In the first place, the amendment states: "shall be expended outside the United States in any instance with a foreign firm which is the recipient of direct foreign government product development support." A determination as to whether or not a foreign firm is the recipient of a direct foreign government subsidy will be difficult. This would place a special burden on the executive.

Then proceeding further it says: "which would constitute unfair competition for any U.S. firm which has a similar product, capability, or proposal." Here determinations also would have to be made with respect to these matters.

Now proceeding with the next sentence it says: "This limitation is waived for continuing and prior year's procurement actions." This is clearly

11. 114 CONG. REC. 26563, 26564, 90th Cong. 2d Sess.

legislation on an appropriation bill, just as the previous portions which I have read.

Under all of the circumstances, I make the point of order that this is legislation on an appropriation bill and requires extra duties to be placed on those who administer it.

MR. HALL: Mr. Chairman, I wish to be heard on the point of order.

I submit that this point of order should not be sustained and should be overruled, because this is a simple limitation on expenditures under the general provisions of this bill which has many additional general provisions limiting expenditures. I think anyone in this Chamber knows that any Government procurement officer and particularly those Government procurement officers who work for the armed services know immediately—and, in fact, it is an open record—when there is a foreign subsidy. That is exactly what is meant by waiver clauses in the amendment which I reread once and which I will not bore the Members with again.

Insofar as direct subsidy appropriations by a foreign nation are concerned, it is in no way legislation on an appropriation bill, because it only involves techniques of ordinary procurement, contract assignment, and negotiation within or without those who respond to "requests for proposals," in the ordinary manner of contracting for arms. This is the very title of the bill.

I submit that the point of order should be overruled, although I will be glad to hear any further debate on the question of the substance of the amendment. . . .

THE CHAIRMAN:[12] The Chair is ready to rule.

The Chair agrees with the gentleman from Texas that the amendment contains legislation which goes beyond the form of proper limitation, and therefore sustains the point of order.

Sales to Communist Countries; Presidential Exception

§ 56.8 To a bill making appropriations for the Department of Agriculture and including funds for the Commodity Credit Corporation, an amendment prohibiting the use of funds for export subsidies on commodities being sold to Communist countries except when the President determines such transaction to be in the public interest and reports his finding to the Congress, imposed extra duties on the President and was ruled out as legislation.

On May 20, 1964,[13] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 11202), a point of order was raised against the following amendment:

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Findley: Page 31, line 8, after the word

12. Daniel D. Rostenkowski (Ill.).

13. 110 CONG. REC. 11434, 11435, 88th Cong. 2d Sess.

"hereof" strike the period, insert a colon and the following: "*Provided further*, That no part of the funds herein appropriated shall be available for any expense incident to making export payments or export subsidies on any agricultural commodities being sold or sold to the government of any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961) or to any agency or national thereof, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination.". . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a point of order against the amendment offered by the gentleman from Illinois on the ground that it is legislation on an appropriation bill.

I will say that I have not had a chance to review the authorities, but it is my recollection during the years that I have served in this capacity handling this bill on the floor of the House, when any provision requires extra duties and imposes those extra duties on the executive department, the President in this instance, such a proposal goes beyond being a restriction on the expenditure of money and amounts to legislation. For that reason, Mr. Chairman, I believe the point of order should be sustained.

THE CHAIRMAN:[14] Does the gentleman from Illinois desire to be heard on the point of order?

MR. FINDLEY: Yes, Mr. Chairman, simply to say that in my opinion, the amendment amounts to a limitation on the use of funds and, therefore, comes within the rules.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Illinois [Mr. Findley] has offered an amendment to the language appearing at page 31, line 8, to insert the following language:

> *Provided further*, That no part of the funds herein appropriated shall be available for any expense incident to making export payments or export subsidies on any agricultural commodities being sold or sold to the government of any Communist country (as defined in section 620(f) of the Foreign Assistance Act of 1961) or to any agency or national thereof, except when the President determines that such guarantees would be in the national interest and reports each such determination to the House of Representatives and the Senate within 30 days after such determination.

In the opinion of the Chair, the language last read, beginning with the words "except when the President determines" does impose additional duties upon the President.

§ 57. Subject Matter: Agriculture

No Funds to Countries Engaging in Trade With North Vietnam

§ 57.1 To a general appropriation bill, an amendment providing that no funds appropriated thereby shall be used to administer programs for

14. Eugene J. Keogh (N.Y.).