FAX COVER SHEET

COMMANDANT (G-OLE)

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NOV 12 1991

FROM:  LT (G-OLE-2)  PHONE:
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NUMBER OF PAGES: 9 (including cover sheet)

SUBJECT:  HAITIAN AGREEMENT AND OTHER RELATED BACKGROUND MATERIAL
TAB B TO APPENDIX 22 TO ANNEX C TO CCDSEVEN OPORD 9760 (U)

PRESIDENTIAL PROCLAMATION ON HIGH SEAS INTERDICTION OF ILLEGAL MIGRANTS (U)

1. (U) GENERAL. The Presidential proclamation of 29 September 1981 suspended the entry of undocumented aliens from the high seas. The Coast Guard was tasked at this time to enforce the suspension.

HIGH SEAS INTERDICTION OF ILLEGAL MIGRANTS
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

The ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region.

As a result of our discussions with the Governments of affected foreign countries and the agencies of the Executive Branch of our Government, I have determined that new and effective measures to curtail these unlawful arrivals are necessary. In this regard, I have determined that international cooperation to intercept vessels trafficking in illegal migrants is a necessary and proper means of insuring the effective enforcement of our laws.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including Sections 212(f) and 215(a)(l) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182 (f) and 1185 (a)(l)), in order to protect the sovereignty of the United States, and in accordance with cooperative arrangements with certain foreign governments, and having found that the entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the interests of the United States, do proclaim that:

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The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.
EXECUTIVE ORDER
INTERDICTION OF ILLEGAL MIGRANTS

By the authority vested in me as President by the Constitution and the statutes of the United States of America, including Sections 212 (f) and 215(a)(l) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185 (a)(l)), in view of the continuing problem of migrants coming to the United States, by sea, without necessary entry documents, and in order to carry out the suspension and interdiction of such entry which have concurrently been proclaimed, it is hereby ordered as follows:

Section 1. (a) The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

Section 2. (a) The Secretary of the Department in which the Coast Guard is operating shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens and the interdiction of any defined vessel carrying such aliens.
Section 2. (b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented under the laws of the United States, or numbered as provided by the Federal Boat Safety Act of 1971, as amended (46 U.S.C. 1451 et seq.), or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1958 (U.S. TIAS 5200; 13 UST 2312).

(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1958 (U.S. TIAS 5200; 13 UST 2312).

(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

Section 2. (c) Those instructions to the Coast Guard shall include appropriate directives providing the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action.

(2) To make inquiries of those on board, examine documents and take such actions as are necessary to establish registry, condition and destination of the vessel and the status of those on board the vessel.

(3) To return the vessel and its passengers to the country from which it came, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that no person who is a refugee will be returned without his consent.

Section 2. (d) These actions, pursuant to this Section, are authorized to be undertaken only outside the territorial waters of the United States.
In furtherance of this cooperative undertaking the United States Government formally requests the Government of the Republic of Haiti's consent to the boarding by the authorities of the United States Government of private Haitian flag vessels in which such authorities have reason to believe that the vessels may be involved in the irregular carriage of passengers outbound from Haiti.

I have the honor to propose that, if the foregoing is acceptable to the Government of the Republic of Haiti this note and Your Excellency's confirmatory reply constitute an agreement between the United States Government and the Government of the Republic of Haiti which shall enter into forces on the date of your reply and shall continue in force until six months from the date either government gives notice to the other of its intention to terminate the agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency
Eduard Francisque
Secretary of State for Foreign Affairs
Port-au-Prince
1. (U) GENERAL. The Bilateral Agreement between the United States and the Republic of Haiti set forth the terms under which the United States would return Haitians who had been apprehended attempting to enter the US illegally.

EMBASSY OF THE
UNITED STATES OF AMERICA
Port-au-Prince, Haiti
September 23, 1981

No. 277

Excellency:

I have the honor to refer to the mutual concern of the Governments of the United States and of the Republic of Haiti to stop the clandestine migration of numerous residents of Haiti to the United States and to the mutual desire of our two countries to cooperate to stop such illegal migration.

The United States Government confirms the understandings discussed by representatives of our two governments for the establishment of a cooperative program of interdiction and selective return to Haiti of certain Haitian migrants and vessels involved in illegal transport of persons coming from Haiti.

Having regard to the need for international cooperation regarding law enforcement measures taken with respect to vessels on the high seas and the international obligations mandated in the protocol relating to the status of refugees done at New York 31 January 1967, the United States Government confirms with the Government of the Republic of Haiti its understanding of the following points of agreement:

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Upon boarding a Haitian flag vessel, in accordance with this agreement, the authorities of the United States may address inquiries, examine documents and take such measures as are necessary to establish the registry, condition and destination of the vessel and the status of those on board the vessel. When these measures suggest that an offense against United States immigration laws or appropriate Haitian laws has been or is being committed, the Government of the Republic of Haiti consents to the detention on the high seas by the United States Coast Guard of the vessels and persons found on board.

The Government of Haiti agrees to permit upon prior notification the return of detained vessels and persons to a Haitian port, or if circumstances permit, the United States Government will release such vessels and migrants on the high seas to representatives of the Government of the Republic of Haiti.

The Government of the Republic of Haiti also agrees in the case of a U.S. flag vessel, outbound from Haiti, and engaged in such illegal trafficking, to permit, upon prior notification, the return to a Haitian port of that vessel and those aboard.

In any case where a Haitian flag vessel is detained, the authorities of the Government of Haiti shall promptly inform the authorities of the Government of the Republic of Haiti of the action taken and shall keep them fully informed of any subsequent developments.

The Government of the Republic of Haiti agrees, to the extent permitted by Haitian law, to prosecute illegal traffickers of Haitian migrants who do not have requisite permission to enter the country of the vessel's destination and to confiscate Haitian vessels or stateless vessels involved in such trafficking. The United States Government likewise agrees, to the extent permitted by United States law, to prosecute traffickers of United States nationality and to confiscate United States vessels engaged in such trafficking.

The Government of the United States agrees to the presence of a representative of the Navy of the Republic of Haiti as liaison aboard any United States vessel engaged in the implementation of this cooperative program.

The United States Government appreciates the assurances which it has received from the Government of the Republic of Haiti that Haitians returned to their country and who are not traffickers will not be subject to prosecution for illegal departure.

It is understood that under these arrangements the United States Government does not intend to return to Haiti any Haitian migrants whom the United States authorities determine to qualify for refugee status.
Section 3. (a) The Attorney General shall, in consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, take whatever steps are necessary to ensure the fair enforcement of our laws relating to immigration and the strict observance of our international obligations concerning those who genuinely flee persecution in their homeland.

THE WHITE HOUSE

29 September 1981
Memorandum

SUBJECT: High Seas Interdiction of Illegal Aliens

FROM: The Secretary

TO: Commandant, U.S. Coast Guard

The President, by Proclamation of Sept. 29, 1981, has found that the entry of undocumented aliens arriving at the borders of the United States from the high seas is detrimental to the interests of the United States and has suspended such entry and ordered its prevention by the interdiction of certain vessels.

Executive Order 12324 directs me to issue appropriate instructions for the U.S. Coast Guard to enforce the suspension and carry out the interdiction.

Therefore, you shall stop and board vessels in accordance with the Executive Order when there is reason to believe that such vessels are engaged in the irregular transportation of persons or the violation of United States law, or the law of a country with which the United States has an arrangement authorizing such action.

You shall make inquiries of those on board, examine documents and take such actions as are necessary to establish the registry, condition and destination of such vessels and the status of those on board.

When there is reason to believe that an offense is being committed against United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist, you may return the vessel and its passengers to the country from which it came. However, no person who is a refugee according to international law will be returned without his consent.

You may take such other action as you may deem appropriate to effectively carry out this interdiction program.

These actions are authorized only outside the territorial waters of the United States.
Memorandum

Date: 23 Sep 1981

Subject: ACTION: Order Implementing the Interdiction of Illegal Aliens

From: Admiral J. B. Hayes
Commandant, U.S. Coast Guard

To: The Secretary
THRU: The Deputy Secretary

BACKGROUND:

The report of the President's Interagency Task Force on Immigration and Refugee Policy recommended, among other things, a limited interdiction program in cooperation with Haiti to deal with the problem of illegal migration of Haitians to the United States. The President has approved the report.

DISCUSSION:

A bilateral arrangement defining the terms of this cooperative operation was concluded with the Republic of Haiti on September 23, 1981. The President has suspended the entry of undocumented aliens by Proclamation of September 29, 1981, and implemented the suspension by Executive Order 12324 on the same date. The Executive Order directs you to issue appropriate instructions to the Coast Guard concerning the operation. Instructions have been drafted to allow flexibility to operational commanders so that the Coast Guard will be responsive to mission-related United States domestic interests, our international obligations to refugees and concern for human rights.

RECOMMENDATION:

I recommend that you sign the attached order directing Coast Guard implementation of the interdiction operation.

2 Attachments
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FROM G-C

SUBJ: HAITIAN INTERDICTION OPERATIONS IMPLEMENTING ORDER

A. COMDTINST 16244.1
B. COMDTINST 16125.18

1. SITUATION - HAITIAN MIGRANT INTERDICTION PROGRAM

A. THE PRESIDENT BY PROCLAMATION OF 29 SEPT 1981 HAS SUSPENDED THE ENTRY OF UNDOCUMENTED ALIENS FROM THE HIGH SEAS. IN ORDER TO ENFORCE SUCH SUSPENSION THE PRESIDENT HAS ORDERED THE COAST GUARD TO INTERCEPT CERTAIN VESSELS (U.S., STATELESS AND THOSE OF FOREIGN NATIONS WHICH HAVE AUTHORIZED SUCH ACTION) ENGAGED IN THE TRAFFICKING OF UNDOCUMENTED MIGRANTS. WHEN THE CIRCUMSTANCES ABOARD A VESSEL TRANSPORTING MIGRANTS INDICATE THE EXISTENCE OF AN OFFENSE AGAINST EITHER UNITED STATES IMMIGRATION LAW, OR APPROPRIATE LAWS OF A FOREIGN COUNTRY WITH WHICH WE HAVE AN AGREEMENT TO ASSIST, THE VESSEL AND PASSENGERS WILL BE RETURNED TO THE COUNTRY OF ORIGIN. IN SUPPORT OF THIS PROGRAM A COOPERATIVE AGREEMENT WITH THE GOVERNMENT OF HAITI (GOH) WAS CONCLUDED ON 23 SEPTEMBER 1981.

B. THE BILATERAL AGREEMENT WITH HAITI PERMITS THE USCG TO

DRAFTER: NAME, TITLE, OFFICE

RELEASING OFFICER: NAME, TITLE, OFFICE

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Board non-governmental Haitian flag vessels in any case where there is reason to believe that the vessel may be involved in the irregular carriage of passengers outbound from Haiti. Upon boarding a Haitian flag or stateless vessel in accordance with this agreement, the USCG may address inquiries, examine documents and take such measures as are necessary to establish the registry, condition and destination of the vessel and the status of those on board. When these measures suggest that an offense against United States immigration laws or appropriate Haitian laws has been or is being committed, the GOH consents to the detention of the vessel and persons found on board. The GOH will permit, upon prior notification, the return of detained vessels and those persons on board to a Haitian port, or, circumstances permitting, the United States government may instead release the detained vessels and such migrants to GOH representatives at sea. The government of the Republic of Haiti has also agreed in the case of a U.S. flag vessel, outbound from Haiti, and engaged in such illegal trafficking, to permit, upon prior notification, the return to a Haitian port of that vessel and those aboard.

C. The U.S. has agreed to the presence of a representative of
THE NAVY OF THE GOH (MH), IN THE CAPACITY OF LIAISON, ABOARD ANY U.S. VESSEL ENGAGED IN THE IMPLEMENTATION OF THIS PROGRAM.

D. THE GOH REQUIRES TRAVEL DOCUMENTS FOR THOSE CITIZENS DEPARTING HAITI. THOSE VESSELS FOUND TRANSPORTING HAITIANS IN VIOLATION OF THIS REQUIREMENT ARE SUBJECT TO SEIZURE UNDER HAITIAN LAW. THE USCG MAY ONLY APPLY THIS LAW TO HAITIAN AND STATELESS VESSELS IN ACCORDANCE WITH THE COOPERATIVE AGREEMENT WHEN THOSE ABOARD ARE IN VIOLATION OF THE HAITIAN TRAVEL DOCUMENTATION REQUIREMENTS AND, REPEAT AND, WHEN THOSE INDIVIDUALS ABOARD DO NOT HAVE THE REQUISITE ENTRY DOCUMENTS FOR THE COUNTRY OF THE VESSEL'S DESTINATION. (IF THE COUNTRY OF DESTINATION OF A HAITIAN FLAG VESSEL OR STATELESS VESSEL IS DETERMINED TO BE THE UNITED STATES, VIOLATION OF U.S. IMMIGRATION LAW ALONE SHALL BE SUFFICIENT TO RETURN THE VESSEL TO HAITI IN ACCORDANCE WITH THE BILATERAL AGREEMENT.)

E. SOME HAITIAN MIGRANTS MAY QUALIFY FOR REFUGEE STATUS UNDER INTERNATIONAL LAW. IN ORDER TO ENSURE COMPLIANCE WITH U.S. INTERNATIONAL OBLIGATIONS REGARDING ACTIONS TOWARD REFUGEES, IT WILL BE NECESSARY TO BE KEENLY ATTUNED DURING ANY INTERD ICTION PROGRAM TO ANY EVIDENCE REFLECTING AN INDIVIDUAL'S WELL-FOUNDED FEAR OF PERSE-
2. ACTION. YOU ARE HEREBY DIRECTED TO COMMENCE IMPLEMENTATION OF THE HAITIAN MIGRANT INTERDICTIO PROGRAM DESCRIBED ABOVE. SUCH OPERATIONS SHALL COMMENCE AS SOON AS IS FEASIBLE IAW THE FOLLOWING GUIDANCE.

A. THE CONSULTATION REQUIREMENTS OF REF A. ARE SUSPENDED VIS-À-VIS HAITIAN FLAG VESSELS BOARDED OR DETAINED IN ACCORDANCE WITH THE BILATERAL AGREEMENT. EACH INTERDICTIO CASE SHALL BE SUBMITTED VIA MSG IAW REF B. USING THE STANDARD NON-MILITARY INCIDENT SITREP FORMAT.

B. IN ANY CASE WHERE A HAITIAN FLAG VESSEL IS DETAINED, THE GOR SHALL BE PROMPTLY INFORMED OF THE CIRCUMSTANCES AND RECOMMENDED ACTION VIA AMBASSAD PORT AU PRINCE. RETURN OF VSL TO HAITI OR RELEASE TO GOR REPRESENTATIVES AT SEA SHALL BE COORDINATED THROUGH THE CGLO AT AMBASSAD PORT AU PRINCE.

C. IF U.S. VSL ARE FOUND TO BE ENGAGED IN TRAFFICKING OF UNDOCUMENTED HAITIAN MIGRANTS, EXAMINE THE CIRCUMSTANCES FOR VIOLATION.

D. DRAFTER NAME, TITLE, OFFICE

E. RELEASING OFFICER NAME, TITLE, OFFICE
TION OF U.S. LAW. IF THERE IS EVIDENCE OF VIOLATION OF U.S. LAW
THAT PERMITS AN ARREST OF THE MASTER AND/OR SEIZURE OF THE VESSEL,
YOU MAY TAKE CUSTODY OF THE VESSEL AND OR MASTER AS APPROPRIATE AND
RETURN THE VSL AND THE HAITIAN MIGRANTS TO HAITI. CIRCUMSTANCES MAY
WARRANT RETENTION OF U.S. TRAFFICKERS ABOARD THE CG CUTTER WHILE IN
HAITIAN WATERS IN ORDER THAT THE UNITED STATES MAY SUBSEQUENTLY
EXERCISE JURISDICTION OVER THE INDIVIDUAL. DO NOT TAKE CUSTODY OF
AND RETURN A U.S. VESSEL TO HAITIAN WATERS FOR THE PURPOSE OF
DISCHARGING HAITIAN MIGRANTS ABSENT A VIOLATION OF U.S. LAW PERM-
MITTING SEIZURE/ARREST. ILLEGAL HAITIAN MIGRANTS MAY, AT THE
DISCRETION OF THE OPCON OR THE OSC IF SO DESIGNATED, BE REMOVED FROM
THE US VESSEL AND RETURNED TO HAITI EVEN THOUGH THE U.S. VESSEL,
UNDER THE CIRCUMSTANCES, MIGHT NOT BE SEIZED.

D. IT IS THEORETICALLY POSSIBLE TO LOCATE A VESSEL HAVING
LEGITIMATE PASSENGERS ABOARD WHICH IS ALSO TRAFFICKING IN ILLEGAL
MIGRANTS AND THEREFORE COMPETENT OF SEIZURE AND RETURN TO HAITI.
SUCH VESSELS MAY AT THE DISCRETION OF THE OPCON BE PERMITTED TO

PROCEED
IN THIS SITUATION
THE ILLEGAL MIGRANTS MAY BE REMOVED FROM THE VESSEL AND RETURNED TO
HAITI AT THE DISCRETION OF THE OPCON OR THE OSC IF SO DESIGNATED.

E. IF THERE IS REASON TO BELIEVE THAT A THIRD COUNTRY FLAG
VESSEL IS ENGAGED IN THE ILLEGITIMATE TRAFFICKING OF HAITIAN MI-
GRANTS, SUBMIT REQUEST TO BOARD AND RECOMMENDATIONS FOR SUBSEQUENT
ACTION TO COMDT IAW REF A.

F. IMMIGRATION AND NATURALIZATION SERVICE (INS) AND/OR STATE
DEPARTMENT (DOS) OFFICERS WILL BE PRESENT DURING BOARDING OPERATIONS.
ALL QUESTIONS REGARDING VSL STATUS WILL BE HANDLED BY CG MEMBERS OF
THE BOARDING PARTY WITH THE ASSISTANCE OF CREOLE INTERPRETERS.
EXAMINATION OF INDIVIDUAL TRAVEL IDENTIFICATION DOCUMENTS WILL BE
HANDLED BY INS OFFICERS WITH THE ASSISTANCE OF CREOLE INTERPRETERS.
INS OFFICERS WILL ALSO BE PRESENT IN CASE THERE IS AN INDICATION TO
SUPPORT A CLAIM TO REFUGEE STATUS. IF SUCH OCCASION ARISES, INS
OFFICERS WILL CONDUCT FURTHER INTERVIEWS. IF THE CLAIM TO PERSECU-
TION APPEARS TO HAVE VALIDITY, THE INS OFFICER WILL AUTHORIZE THE
PAROLE OF THE INDIVIDUAL INTO THE UNITED STATES WHERE THE CLAIM WILL
BE FURTHER EXAMINED. THE MECHANICS OF REFUGEE STATUS DETERMINATIONS

DRAFTED BY: NAME, TITLE, OFFICE
RECEIVING OFFICER: NAME, TITLE, OFFICE

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(7) (BEGIN TEXT ON LINE 10. DOUBLE SPACE. MAKE NO MARKS IN SHAD ED AREA).

REQUIRE OSC DISCRETION AS TO LOCATION OF INTERVIEWS WITH ON SCENE CONDITIONS; PRIVACY REQUIREMENTS AND OTHER THREATS ASSESSED.

REFUGEE STATUS DETERMINATIONS ARE THE SOLE PROVINCE OF THE EMBARKED INS/DOS OFFICER(S).

G. THOSE INDIVIDUALS AUTHORIZED PAROLE INTO THE U.S. FOR FURTHER CONSIDERATION OF STATUS SHOULD BE IMMEDIATELY EXAMINED BY THE MEDICAL TEAM ASSIGNED TO CUTTER O/S. THE TIMELINESS OF TRANSPORTING THESE PEOPLE TO THE U.S. IS WITHIN THE THE PURVIEW OF THE OPCON OR HIS OSC IF SO DESIGNATED; HOWEVER, IF A DECISION IS MADE TO AUTHORIZE PAROLE, NO ACTION SHALL BE TAKEN WHICH SUBMITS THE INDIVIDUAL TO THE AUTHORITY OF THE GOH.

H. THE ROLE OF THE MH OFFICER EMBARKED IS TO PROVIDE COORDINATION WITH MH UNITS AND OTHER GOH OFFICIALS AS REQUIRED WHEN ENTERING OR DEPARTING PORT. THE MH OFFICER MAY ALSO ADVISE AS TO ADDITIONAL HAITIAN LAW WHICH MAY BE RELEVANT TO A PARTICULAR SITUATION. THE MH OFFICER SHALL NOT BE ALLOWED TO INFLUENCE REFUGEE STATUS DETERMINATIONS NOR MAKE CONTACT WITH THOSE ASSERTING OR DETERMINED TO HAVE A VALID CLAIM TO SUCH STATUS. IF HAITIAN LAW, OTHER THAN THAT RELATING TO TRAFFICKING OF ILLEGAL MIGRANTS, IS SUGGESTED TO BE

(8) DRAFTER-NAME, TITLE, OFFICE

(10) RELEASING OFFICER-NAME, TITLE, OFFICE

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APPROPRIATE TO THE CIRCUMSTANCE, COORDINATION WITH COMDT IS REQUIRED PRIOR TO THE ENFORCEMENT OF THE SUGGESTED LAW.

I. THE RETURN OF MIGRANTS TO HAITI UNDER THIS OPERATION IS AUTHORIZED ONLY WHEN THE INTERCEPTION OCCURS OUTSIDE THE TERRITORIAL SEAS OF THE UNITED STATES. ANY VESSEL TRANSPORTING ILLEGAL MIGRANTS THAT IS INTERCEPTED WITHIN THE TERRITORIAL WATERS OF THE UNITED STATES SHALL BE ESCORTED TO A U.S. PORT FOR INS INSPECTION IAW STANDARD PROCEDURES.

CC