

## ***Thoughts on "Conditionality" in the New U.S. Aid Bill by Kashif Zafar***

President Bush is expected to sign the 3000 page \$500bln+ Defense Omnibus bill since it was passed with a bipartisan 76-17 vote in the Senate after passing with a bipartisan 254-153 vote in the House. This bill contains the language pertaining to the Pakistan aid package, including some "contingency" language inserted by the Congressional Democrats which ties a portion of the counter-terrorism military aid (\$50mm out of \$300mm under "Foreign Military Financing" program) to performance measures on the "rule of law" and "democracy" front. The bill also bans direct cash payments to the Pakistan government which would impact \$150-200mm of annual cash payments that were likely going towards the military. In addition, the bill puts further restrictions which could lead to suspension of future sales of F-16 and other useful military hardware.

Going forward the US will provide the "development related" aid funds directly to NGOs and will bypass the Pakistan government for fear of those funds being used for other purposes. It is quite clear that the Democrats in Congress have acted consistently with what they have been saying since Nov 3rd which is that they will fight to stop all non-terrorism related military aid to Pakistan unless [there is](#) follow through on restoring the rule of law and taking other necessary steps vis a vis the judiciary, media, political detainees etc

By virtue of their actions, the Congressional Democrats have fired a clear warning shot to remind President Musharraf and the military top brass in Pakistan that the days of unchecked US military assistance are over. Many will be disappointed that exact language regarding the "restoration of the old judiciary" is not in the bill but there is a reasonable explanation for it.

As expected, there was a some debate in the Appropriations Foreign Operations Conference Committee (select members of House and Senate Appropriations committees meeting together) about including language asking for "restoration of old judiciary" but eventually they settled on making portion of the counter-terrorism related military aid contingent on "restoring an independent judiciary" among other things. It was explained that the Democratic Chairs of the Appropriations sub-committees on Foreign Operations (Patrick Leahy in the Senate and Nita Lowey in the House) had to make the following choice on every single key issue in the budget including the language in the Pakistan bill: 1) either come up with the toughest language possible and face a likely Bush veto, OR, 2) agree on compromise language with congressional republicans on the committee knowing that Bush is less likely to veto a compromise bill. Led by Senator Judd Gregg (R-NH) who is the Ranking member of the Senate Appropriations sub-committee on Foreign Operations, the Republican members argued Bush's position on his behalf as they have little power of their own being a minority party in both chambers of Congress. These republicans were adamant that adding language asking for "restoration of old judiciary" was a non-starter, which should not be surprising given the Bush administration's lack of interest in addressing the "restoration of old judiciary" issue since Nov 3rd. [There](#) was no need for such language because a major opposition leader in Pakistan, namely Benazir Bhutto, was also only specifically asking for an "independent judiciary" and not for the "restoration of old judiciary". In addition the language as it currently stands

asking for "restoration" of an "independent judiciary" leaves the door open for the old judiciary to be restored down the road.

So this language by no means should be interpreted to mean that the Democrats in Congress have somehow completely given up on the issue of restoration of the old judiciary. The compromise language being used in the Pakistan portion of the bill and on other important issues in the 3000-page \$500bln+ Defense Omnibus bill was simply a result of the Democrats desire to have a compromise bill in front of Bush that had a high likelihood of getting his approval.

If Bush signs the bill as is expected, his administration will then have to provide certification that the requirements laid out in the Pakistan "contingent" aid bill are being fulfilled, e.g., Bush will have to certify that "Pakistan is implementing democratic reforms including restoring an independent judiciary" before the \$50mm is released. Interestingly enough, it looks like President Bush, like his predecessor in the White House, will also get to play with the definition of the word "is" (and there is some chance a second President Clinton gets to play with that definition as well starting in Jan 2009). The administration can choose not to provide certification but the "contingent" aid can still go through if the administration instead asks for a "waiver" from Congress by saying that providing the aid is in the national security interest of the United States. Either way, it seems like a safe bet that Bush will either provide the certification or ask for a waiver so the "contingent" aid can continue to flow through for as long as he is President.

All political pundits agree that Democrats will keep and maybe even increase their majority in the House and the Senate so the pressure from Congressional Democrats will not go away. Senator Joe Biden has played a big role as a leader of the Congressional Democrats on this issue and his proposed Pakistan aid package, which increases non-military aid threefold to \$1.5bln and ties it to democratic reforms and ties military aid to performance on the terrorism front, is a great alternative to the Bush aid packages and changes the US/Pakistan dynamic from a "transactional" relationship to a "normal, functional" relationship.