

**Functional Series 200 – Programming Policy
 ADS 225 – Program Principles for Trade and Investment Activities and
 the “Impact on U.S. Jobs” and "Workers' Rights"**

Table of Contents

<u>225.1</u>	<u>OVERVIEW</u>	<u>2</u>
<u>225.2</u>	<u>PRIMARY RESPONSIBILITIES</u>	<u>2</u>
<u>225.3</u>	<u>POLICY DIRECTIVES AND REQUIRED PROCEDURES</u>	<u>3</u>
<u>225.3.1</u>	<u>Relocation and Loss of U.S. Jobs</u>	<u>3</u>
<u>225.3.1.1</u>	<u>Trade - Investment Development Framework</u>	<u>3</u>
<u>225.3.1.2</u>	<u>Scope of Program Design</u>	<u>3</u>
<u>225.3.1.3</u>	<u>Determination of Allowable Activities</u>	<u>4</u>
<u>225.3.1.4</u>	<u>Examples of Permitted Activities</u>	<u>4</u>
<u>225.3.1.5</u>	<u>Prohibited Activities</u>	<u>5</u>
<u>225.3.1.6</u>	<u>Gray-Area Activities</u>	<u>6</u>
<u>225.3.1.7</u>	<u>Analytical Procedures for Gray-Area Activities</u>	<u>7</u>
<u>*225.3.1.8</u>	<u>Required Clause for Gray-Area Activities</u>	<u>7</u>
<u>*225.3.2</u>	<u>Internationally Recognized Workers' Rights</u>	<u>8</u>
<u>225.3.3</u>	<u>Exceptions to ADS Chapter 225 Requirements</u>	<u>9</u>
<u>225.4</u>	<u>MANDATORY REFERENCES</u>	<u>10</u>
<u>225.4.1</u>	<u>External Mandatory References</u>	<u>10</u>
<u>225.4.2</u>	<u>Internal Mandatory References</u>	<u>10</u>
<u>225.5</u>	<u>ADDITIONAL HELP</u>	<u>10</u>
<u>225.6</u>	<u>DEFINITIONS</u>	<u>10</u>

ADS 225 – Program Principles for Trade and Investment Activities and the “Impact on U.S. Jobs” and "Workers' Rights"

225.1 OVERVIEW

Effective Date: 04/21/2003

USAID's strategy to promote economic growth and reduce poverty encourages the integration of developing countries into the global economy. To this end, USAID's trade capacity building strategy calls for "trade capacity building" activities as a means to accomplish the objective of accelerating growth and increasing incomes. The trade capacity building strategy includes a broad range of activities to improve economic policies and institutions, to encourage the development of the private sector, to establish a sound investment climate, to support the President's trade negotiating agenda, and to better participate in the multilateral trading system. In designing these activities, it is important to recognize that they must be consistent with U.S. foreign policy objectives, as stated in the Foreign Assistance Act of 1961, as amended (FAA), the U.S. Government's trade and development objectives set forth in trade legislation, and the President's annual International Trade Agenda.

This ADS chapter establishes the policies and procedures to implement “Impact of Jobs in the United States,” a recurring provision in USAID appropriations acts. In the FY 2003 appropriations act it is [Section 533 of Pub. L. 108-7](#). This chapter supersedes USAID Policy Determination (PD) 20 -- “U.S. Programs and U.S. Jobs.” The chapter applies to activities financed with appropriated dollars and local currency funds, including those generated through Pub.L. 480 programs. It contains program design and implementation procedures to ensure that USAID-funded “trade and investment” activities do not

- a. Provide financial incentives and other assistance for U.S. companies to relocate abroad if it is likely to result in the loss of U.S. jobs; or
- b. Contribute to violations of internationally recognized workers' rights defined in [19 U.S.C. 2467\(4\)](#).

225.2 PRIMARY RESPONSIBILITIES

Effective Date: 04/21/2003

- a. The Bureau for Economic Growth, Agriculture, and Trade (EGAT) is the office responsible for maintaining this chapter and for providing technical advice to Operating Units on designing and implementing trade and investment activities that comply with this chapter.
- b. Operating Units are responsible for designing, approving, monitoring, and implementing trade and investment-related activities in compliance with the requirements in ADS 225.

c. The Office of the General Counsel (GC) and/or the Regional Legal Advisor (RLA) is responsible for advising Operating Units on (1) whether a proposed activity meets the requirements of the law and this chapter and (2) the language to be included in contracts, grants, and other agreements to ensure compliance with this chapter.

225.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 04/21/2003

225.3.1 Relocation and Loss of U.S. Jobs

Effective Date: 04/21/2003

225.3.1.1 Trade - Investment Development Framework

Effective Date: 04/21/2003

The U.S. vision of the world economy is one of expanding global trade and bringing the benefits of international trade to developing countries. President Bush's International Trade Agenda emphasizes the mutual interdependency of trade and development. Open markets promote economic and political freedom, and in turn, create the foundation for competitive markets, democratic societies, and the integration of developing countries into the world economy.

In keeping with the President's International Trade Agenda to promote America's interests around the world, which include building and creating opportunities for economic growth and empowerment in developing countries, this ADS chapter provides the guidance for funding complementary trade – investment-related activities with bilateral assistance funds in the context of the "Impact on Jobs" provision. As President Bush indicated at the Financing for Development Conference in Monterrey, Mexico (March 21, 2002), "The work of development is much broader than development aid. The vast majority of financing for development comes not from aid, but from trade and domestic capital and foreign investment." While USAID activities are designed to advance an economic development agenda, these guidelines acknowledge the Congressional mandate that foreign assistance funds for trade and investment activities not be used for activities that would likely result in the loss of U.S. jobs or contribute to the violation of workers' rights.

225.3.1.2 Scope of Program Design

Effective Date: 04/21/2003

This chapter, compared to the former PD 20, allows for a broader spectrum of trade and investment activities. Operating Units have increased authority and accountability to design and implement trade and investment activities.

225.3.1.3 Determination of Allowable Activities

Effective Date: 04/21/2003

This ADS chapter classifies “trade and investment” activities into three categories containing illustrative examples. The three categories are

- Permitted,
- Prohibited, and
- Gray-area (those requiring further review and consideration in the design process to determine the likely impacts on jobs and relocation).

If there is any doubt about whether a specific activity involves investment promotion, the Operating Unit must resolve the doubt by considering the activity to involve investment promotion and analyze the activity under this chapter.

225.3.1.4 Examples of Permitted Activities

Effective Date: 04/21/2003

These are activities which, even though they have a trade or investment orientation, by their nature would be too indirectly linked to any potential relocation or are not consciously directed at inducing a business to relocate. These activities do not require any further review in terms of this ADS chapter. These activities may be funded without additional implementation controls. The following list of permitted activities is illustrative, not all-inclusive.

Illustrative activities which fall into this category are

- Policy dialogue designed to improve the overall domestic business and economic climate of the country;
- Policy dialogue designed to improve financial and capital markets of the country;
- Legal, regulatory, and judicial reform projects, including those explicitly aimed at improving the climate for commercial activities within the country;
- Dissemination and analysis of information regarding the general economic and business climate in a country;
- Enhancing the competitiveness of local producers;
- Strengthening business associations and free trade associations;
- Development of business service industries that target local enterprise;

- General business education, workers' rights awareness, and/or vocational training;
- Capital projects designed to improve the basic productive capacity of a country or enhance the ability to provide services;
- Microenterprise and small business development;
- Trade missions designed to stimulate interest in U.S. technologies for addressing developmental problems;
- Agricultural projects designed to address food security needs;
- Credit or other credit-related assistance designed to correct financial market imperfections in a host country (for example, Development Credit Authority activities);
- Technical assistance to promote privatization of state-controlled businesses and to improve the competitive and regulatory climate for their operation;
- Trade capacity building technical assistance to speed the integration of developing countries into the global economy, which may include accession to the World Trade Organization, and compliance with preferential and international trade agreements;
- Trade facilitation (including customs reform) technical assistance to reduce transactions costs and to remove regulatory and physical barriers to trade; and
- Technical assistance to ensure compliance with and enforcement of the International Labor Organization's core labor standards.

225.3.1.5 Prohibited Activities

Effective Date: 04/21/2003

Prohibited activities represent too high a risk of being directly linked to a potential relocation. These activities may not be funded under any circumstances. The following is a list of illustrative examples. As these are only examples, there may be others not listed here that may also fall into this category.

Activities which fall into this category are

- Financial incentives to relocate;
- Investment promotion missions to the U.S. where the intent is to induce U.S. firms to relocate;

- Feasibility studies, research services, studies, travel to the host country, insurance and technical and management assistance where the intent is to induce U.S. firms to relocate;
- Media advertising in the U.S. aimed at encouraging relocation of U.S. firms to the host country;
- Training of workers for firms that intend to relocate;
- Support for a U.S. office of an organization where the mission involves offering incentives to relocate; and
- General budget support for such an organization if it engages in any prohibited activity.

225.3.1.6 Gray-Area Activities

Effective Date: 04/21/2003

These are activities that are generally permitted, provided that Operating Units (1) conduct the analytical review in [225.3.1.7](#) before funding the activity and (2) design and implement the activity so that it does not contain or evolve into prohibited elements. Examples of such activities are

- Technical assistance in establishing linkages with U.S. businesses;
- Establishing investment promotion offices, and financing trade fairs, exhibitions, and investment seminars in the host country;
- Media advertising in the U.S. directed at investment promotion;
- Feasibility studies, research services, studies, travel to the host country, insurance and technical and management assistance offered to firms contemplating or planning investments in the host country;
- Activities involving export processing zones;
- Equity fund investments in host country activities;
- Investment promotion missions to the U.S.; and
- Support for a U.S. office of an organization whose mission includes promoting investment in the host country.

225.3.1.7 Analytical Procedures for Gray-Area Activities

Effective Date: 04/21/2003

In conducting the analytical review to determine the potential impact on U.S. jobs, Operating Units must answer the following questions:

- Is the activity directed at promoting either foreign direct or local investment in the recipient country?
- Could the activity reasonably be foreseen to stimulate the relocation of *any* U.S. business that would result in a reduction in the number of employees of the business in the U.S.?

The factors to consider include, but are not limited to

- Whether the recipient country or region is geographically attractive to U.S. firms;
- Whether the types of firms targeted under the project are likely candidates for relocation; and
- Whether the activity has an impact on U.S. production of a comparable product.

The analysis should focus on the likely impact on U.S. jobs, rather than the activities themselves. In examining potential relocations, the key question is *what would be the likely result on U.S. jobs, not what form the overseas relocation may take.*

Even where the objective is to preserve U.S. jobs, if the immediate effect would be a loss of some U.S. jobs to an overseas operation, the activity cannot be funded.

If there is not a reasonable likelihood that relocation could take place as a result of the activity, then the Operating Unit can fund the activity.

If, in analyzing these and similar factors, the conclusion is reached that the activity may result in the relocation of a U.S. business and loss of U.S. jobs, then the Operating Unit cannot fund the activity unless it can modify the design or implementation activity to eliminate any likelihood that a relocation would take place.

225.3.1.8 Required Clause for Gray-Area Activities

Effective Date: 11/17/2003

For gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, the following clause, or a substantive alternative, is required for grants and cooperative

agreements to private entities, public international organizations and foreign governments; interagency obligating agreements; and contracts:

“Investment Promotion

“(a) Except as specifically set forth in the [Grant] or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.

“(b) In the event the [Grantee] is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the [Grantee] must notify the [Agreement Officer] and provide a detailed description of the proposed activity. The [Grantee] must not proceed with the activity until advised by USAID that it may do so.

“(c) The [Grantee] must ensure that its employees and subcontractors and sub-recipients providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts and other sub-agreements entered into hereunder.”

*The clause is not required for a permitted activity, but an Operating Unit may include such a clause at its discretion. The Agreement Officer or Contracting Officer is authorized to use a substantive alternative clause or to insert the clause’s substance in implementation letters or comparable subsidiary documents.

225.3.2 Internationally Recognized Workers' Rights

Effective Date: 11/17/2003

Operating Units may not obligate or expend funds for activities (including export processing zones (EPZs)) that *contribute to the violation* of internationally recognized workers’ rights as defined in 19 U.S.C. 2467(4). The “internationally recognized workers’ rights” are

- a. The right of association;
- b. The right to organize and bargain collectively;
- c. A prohibition on the use of any form of forced or compulsory labor;
- d. A minimum age for the employment of children; and
- e. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The last two – d. and e. – may be applied commensurate with the development of the country, and the fact that they may be affected does not preclude an activity for the informal sector in a country, micro and small-scale enterprise, and smallholder agriculture.

Operating Units must review employment-related activities to ensure that they *do not contribute to* a violation of the above workers' rights. Many activities will be neutral on workers' rights and, therefore, are not prohibited.

For activities that *may affect workers' rights* or where specific activities are not identified at the time of obligation and may affect workers' rights, the following clause, or a substantive alternative, is required for grants and cooperative agreements to private entities, public international organizations and foreign governments; interagency obligating agreements; and contracts:

“Workers’ Rights

“(a) Except as specifically set forth in the [Grant] or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves workers' rights in a foreign country.

“(b) In the event the [Grantee] is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the [Grantee] must notify the [Agreement Officer] and provide a detailed description of the proposed activity. The Grantee must not proceed with the activity until advised by USAID that it may do so.

“(c) The [Grantee] must ensure that all employees and subcontractors and sub-recipients providing employment-related services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts and other sub-agreements entered into hereunder.”

*The clause is not required for a permitted activity, but an Operating Unit may include such a clause at its discretion. The Agreement Officer or Contracting Officer is authorized to use a substantive alternative clause or to insert the clause's substance in implementation letters or comparable subsidiary documents.

225.3.3 Exceptions to ADS Chapter 225 Requirements

Effective Date: 04/21/2003

The Assistant Administrator of the respective Bureau has the authority to make exceptions to this chapter for activities under his or her responsibility.

225.4 MANDATORY REFERENCES

225.4.1 External Mandatory References

- a. [Section 533 of Pub. L. 108-7, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003](#)
- b. [19 U.S.C. 2467\(4\), Definitions, Internationally Recognized Worker Rights \[Part of the Trade Act of 1974\]](#)

225.4.2 Internal Mandatory References

- a. [ADS 201, Planning](#)

225.5 ADDITIONAL HELP

- a. [Brief Legislative History on Program Principles for Trade - Investment-Related Activities and the "Impact on U.S. Jobs" and "Workers' Rights"](#)

225.6 DEFINITIONS

Effective Date: 04/21/2003

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

export processing zone

This is an industrial area, usually with defined boundaries, that specializes in manufacturing and/or providing services for export and that also may offer a liberal regulatory environment relative to the rest of the country. (Chapter 225)

225_112003_w112603