



ADS Chapter 225

Program Principles for Trade and Investment Activities and the “Impact on U.S. Jobs” and “Workers’ Rights”

Partial Revision Date: 07/10/2013
Responsible Office: E3/TRR
File Name: 225_071013

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

<u>225.1</u>	<u>OVERVIEW</u>	<u>3</u>
<u>225.2</u>	<u>PRIMARY RESPONSIBILITIES</u>	<u>3</u>
<u>225.3</u>	<u>POLICY DIRECTIVES AND REQUIRED PROCEDURES</u>	<u>4</u>
<u>225.3.1</u>	<u>Relocation and Loss of U.S. Jobs</u>	<u>4</u>
<u>225.3.1.1</u>	<u>Trade - Investment Development Framework</u>	<u>4</u>
<u>225.3.1.2</u>	<u>Scope of Project Design</u>	<u>4</u>
<u>225.3.1.3</u>	<u>Determination of Allowable Activities</u>	<u>5</u>
<u>225.3.1.4</u>	<u>Examples of Permitted Activities</u>	<u>5</u>
<u>225.3.1.5</u>	<u>Prohibited Activities</u>	<u>6</u>
<u>225.3.1.6</u>	<u>Gray-Area Activities</u>	<u>7</u>
<u>225.3.1.7</u>	<u>Analytical Procedures for Gray-Area Activities</u>	<u>8</u>
<u>225.3.1.8</u>	<u>Required Clause for Gray-Area Activities</u>	<u>9</u>
<u>225.3.2</u>	<u>Internationally Recognized Workers' Rights</u>	<u>10</u>
<u>225.3.3</u>	<u>Branding, Marking Requirements and Communications</u>	<u>11</u>
<u>225.3.4</u>	<u>Exceptions to ADS Chapter 225 Requirements</u>	<u>11</u>
<u>225.4</u>	<u>MANDATORY REFERENCES</u>	<u>11</u>
<u>225.4.1</u>	<u>External Mandatory References</u>	<u>11</u>
<u>225.4.2</u>	<u>Internal Mandatory References</u>	<u>11</u>
<u>225.5</u>	<u>ADDITIONAL HELP</u>	<u>12</u>
<u>225.6</u>	<u>DEFINITIONS</u>	<u>12</u>

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

225.1

OVERVIEW

Effective Date: 07/10/2013

USAID's strategy to promote economic growth and reduce poverty encourages the integration of developing countries into the global economy. To this end, USAID pursues economic growth activities as a means to accomplish the objective of accelerating broadly shared growth and increasing incomes. USAID implements 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 trade, and to more actively participate in the multilateral and regional trading systems. 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 (FAA) of 1961, as amended; the U.S. Government's trade and development objectives set forth in trade legislation; and related policy documents.

This ADS chapter establishes the policies and procedures to implement “Impact of Jobs in the United States,” a recurring provision in USAID appropriations acts. This chapter supersedes USAID Policy Determination (PD) 20 -- “U.S. Programs and U.S. Jobs.” The chapter applies to activities financed with appropriated funds (whether dollars or converted local currency), including those generated through Public Law 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 operations 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: 07/10/2013

- a. The **Bureau for Economic Growth, Education, and Environment (E3)** 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 and as part of the project design process defined in [ADS 201](#).
- c. The **Office of the General Counsel (GC) and/or the Regional Legal Officer (RLO)** is responsible for advising Operating Units on (1) whether a proposed activity

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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

225.3.1 Relocation and Loss of U.S. Jobs

225.3.1.1 Trade - Investment Development Framework

Effective Date: 07/10/2013

The U.S. vision of the world economy is one of expanding global trade and bringing the benefits of international trade to developing countries. The U.S. National Security Strategy notes the importance to the U.S. of prosperous and stable developing countries. 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.

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- and investment-related activities with bilateral assistance funds. It has been a longstanding U.S. Government position, across multiple administrations from both parties, that trade and investment are important components of development. 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." The White House Fact Sheet regarding President Obama's Presidential Policy Directive on Global Development (September 22, 2010) states that the United States will "foster the next generation of emerging markets by enhancing our focus on broad-based economic growth and democratic governance. Economic growth is the only sustainable way to accelerate development and eradicate poverty." USAID recognizes the importance trade places in helping developing countries grow and thereby wean themselves away from official development assistance. While USAID activities are designed to advance an economic development agenda, these guidelines acknowledge the 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 Project Design

Effective Date: 07/10/2013

This chapter allows for a broad spectrum of trade and investment activities. Operating Units have authority and accountability to design and implement trade and investment activities as elements of a project design process.

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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: 07/10/2013

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 trade associations;
- Development of business service industries that target local enterprise;

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- General business education, workers' rights awareness, and/or vocational training;
- **General purpose English language 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, **regional, and/or** 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: 07/10/2013

Prohibited activities represent too high a risk of being directly linked to a potential relocation **of U.S. jobs.** 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;

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- Investment promotion missions to the U.S. where the intent is to induce U.S. firms **or operations** to relocate **U.S. jobs**;
- Feasibility studies, research services, studies, travel to the host country, insurance and technical and management assistance where the intent is to induce U.S. **operations or** firms to relocate **U.S. jobs**;
- Media advertising in the U.S. aimed at encouraging relocation of U.S. **-based operations or** firms to the host country;
- Training of **overseas** workers for **U.S.-based operations or** 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 an organization, **such as an investment authority or a chamber of commerce**, if it engages in any prohibited activity.

225.3.1.6 Gray-Area Activities
Effective Date: 07/10/2013

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 **in the host country**;
- Feasibility studies, research services, studies, travel to the host country, insurance and technical and management assistance offered to **U.S.-based** firms contemplating or planning investments in the host country;
- Activities involving export processing zones;
- Equity fund investments in host country activities;

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- Activities (such as firm-specific training, provision of business development services, credit, etc.) providing support for business process outsourcing for export when the market is expected to be wholly or partially the United States;
- 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: 07/10/2013

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 investment in the recipient country?
- Could the activity reasonably be foreseen to directly stimulate the relocation of any U.S. business or business process that would result in an identifiable 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 or business process outsourcing by U.S.-based businesses; and
- Whether the activity has an impact on U.S. production of a comparable product or service.

The analysis should focus on the likely impact on U.S. jobs, rather than the activities themselves. In examining potential relocations or business process outsourcing by U.S.-based businesses, the key question is what would be the likely result on U.S. jobs, not what form the overseas relocation or business process outsourcing for export may take or the nationality of the companies supplying or purchasing business process outsourcing services.

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.

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If, in analyzing these and similar factors, the conclusion is reached that the activity may result in the relocation of a U.S.-based 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 the likelihood that a relocation would take place.

When activities fall in the Gray-area, Missions must discuss the proposed activities with regional bureau program office staff.

Documentation of the review must be included in the approval package for each relevant activity. Documentation should be maintained in any resulting project files, and pertinent documents attached to the Project Appraisal Document ([ADS 201, Program Cycle Operational Policy](#)). (GC or the RLO will verify this when clearing the package.)

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.

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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.

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

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 Branding, Marking Requirements and Communications

Effective Date: 07/10/2013

Operating Units should carefully review brochures, press releases, websites and any other USG or Contractor/Grantee public communications to ensure that they do not mischaracterize the intention or impact of a USAID activity regarding U.S jobs or worker rights. When questions arise, Operating Units are encouraged to consult with the Bureau of Legislative and Public Affairs.

225.3.4 Exceptions to ADS Chapter 225 Requirements

Effective Date: 07/10/2013

With respect to his/her respective Bureau or Independent Office, Assistant Administrators, Assistants to the Administrator, and Heads of Independent Offices have 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

Effective Date: 04/21/2003

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

225.4.2 Internal Mandatory References

Effective Date: 04/21/2003

- a. [ADS 201, Program Cycle Operational Policy](#)

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225.5 ADDITIONAL HELP

Effective Date: 04/21/2003

- a. [ADS 225saa, 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: 07/10/2013

See the [ADS Glossary](#) for all ADS terms and definitions.

Business Process Outsourcing for Export (BPO)

This is the contracting by a U.S.-based business of a specific business task, such as payroll or records transcription, to a third-party service provider outside the U.S. **(Chapter 225)**

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)**

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