

“(ii) make such information available through an appropriate agency of the Department of Agriculture to agribusinesses and agricultural institutions in the United States and other agencies of the United States Government; and

“(iii) carry out a program—

“(I) to review available agricultural information resources, to determine which would be useful for the purposes of this program;

“(II) to arrange for the exchange of persons associated with such agricultural institutions and agribusinesses with experience or interest in the areas of need identified in clause (i);

“(III) to help establish contacts between agricultural entrepreneurs and businesses in the United States and emerging markets, which may include individuals and entities participating in the program established under paragraph (1), to facilitate cooperation and joint enterprises; and

“(IV) to provide for the exchange of administrators and faculty members from agricultural and other institutions to strengthen and revise educational programs in agricultural economics, agribusiness, and agrarian law, to support change towards a free market economy in emerging markets.

“(C) CONSULTATION AND COORDINATION.—The Secretary shall consult and coordinate with the Secretary of State and the Agency for International Development in the formulation and implementation of this program in conjunction with overall assistance to emerging markets.

“(D) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the program established under this paragraph.

“(e) FOREIGN DEBT BURDENS.—In carrying out the program described in subsection (a), the Secretary of Agriculture shall ensure that the credits for which repayment is guaranteed under subsection (a) do not negatively affect the political and economic situation in emerging markets by excessively adding to the foreign debt burdens of such countries.

“(f) EMERGING MARKET.—In this section and section 1543 [7 U.S.C. 3293], the term ‘emerging market’ means any country that the Secretary determines—

“(1) is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

“(2) has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.”

PRESIDENTIAL DETERMINATION OF EMERGING DEMOCRACIES

Determination of President of the United States, No. 95-35, Aug. 10, 1995, 60 F.R. 44723, provided:

Pursuant to the authority vested in me by section 1542(f) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (7 U.S.C. 5622 note) (hereinafter “the Act”), I hereby determine that the following countries are taking the steps set forth in section 1542(f) of the Act to qualify as emerging democracies for purposes of that section:

Albania, Bangladesh, Belarus, Bosnia and Herzegovina, Bulgaria, Cambodia, Croatia, Czech Republic, Egypt, El Salvador, Estonia, the Former Yugoslav Republic of Macedonia, Ghana, Guatemala, Hungary, Jordan, Kazakhstan, Latvia, Lithuania, Morocco, Namibia, Nicaragua, Pakistan, Panama, the Philippines, Poland, Romania, Russia, Slovak Republic, Slovenia, South Africa, Tanzania, Tunisia, Ukraine, Yemen, and Zimbabwe.

In making this determination, I have considered the eligibility only of those countries for which programs are underway or currently contemplated by the Department of Agriculture.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

WILLIAM J. CLINTON.

§ 5623. Market access program

(a) In general

The Commodity Credit Corporation shall establish and carry out a program to encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities (including commodities that are organically produced (as defined in section 6502 of this title) through cost-share assistance to eligible trade organizations that implement a foreign market development program.

(b) Type of assistance

Assistance under this section may be provided in the form of funds of, or commodities owned by, the Commodity Credit Corporation, as determined appropriate by the Secretary.

(c) Requirements for participation

To be eligible for cost-share assistance under this section, an organization shall—

(1) be an eligible trade organization;

(2) prepare and submit a marketing plan to the Secretary that meets the guidelines governing such plans established by the Secretary; and

(3) meet any other requirements established by the Secretary.

(d) Eligible trade organizations

An eligible trade organization shall be—

(1) a United States agricultural trade organization or regional State-related organization that promotes the export and sale of agricultural commodities and that does not stand to profit directly from specific sales of agricultural commodities;

(2) a cooperative organization or State agency that promotes the sale of agricultural commodities; or

(3) a private organization that promotes the export and sale of agricultural commodities if the Secretary determines that such organization would significantly contribute to United States export market development.

(e) Approved marketing plan

(1) In general

A marketing plan submitted by an eligible trade organization under this section shall describe the advertising or other market oriented export promotion activities to be carried out by the eligible trade organization with respect to which assistance under this section is being requested.

(2) Requirements

To be approved by the Secretary, a marketing plan submitted under this subsection shall—

(A) specifically describe the manner in which assistance received by the eligible trade organization in conjunction with funds and services provided by the eligible trade organization will be expended in implementing the marketing plan;

(B) establish specific market goals to be achieved as a result of the market access program; and

(C) contain whatever additional requirements are determined by the Secretary to be necessary.

(3) Amendments

A marketing plan may be amended by the eligible trade organization at any time, with the approval of the Secretary.

(4) Branded promotion

An agreement entered into under this section may provide for the use of branded advertising to promote the sale of agricultural commodities in a foreign country under such terms and conditions as may be established by the Secretary.

(f) Other terms and conditions**(1) Multi-year basis**

The Secretary may provide assistance under this section on a multi-year basis, subject to annual review by the Secretary for compliance with the approved marketing plan.

(2) Termination of assistance

The Secretary may terminate any assistance made, or to be made, available under this section if the Secretary determines that—

(A) the eligible trade organization is not adhering to the terms and conditions of the program established under this section;

(B) the eligible trade organization is not implementing the approved marketing plan or is not adequately meeting the established goals of the market access program;

(C) the eligible trade organization is not adequately contributing its own resources to the market access program; or

(D) the Secretary determines that termination of assistance in a particular instance is in the best interests of the program.

(3) Evaluations

The Secretary shall monitor the expenditure of funds received under this section by recipients of such funds. The Secretary shall make evaluations of such expenditure, including—

(A) an evaluation of the effectiveness of the program in developing or maintaining markets for United States agricultural commodities;

(B) an evaluation of whether assistance provided under this section is necessary to maintain such markets; and

(C) a thorough accounting of the expenditure of such funds by the recipient.

The Secretary shall make an initial evaluation of expenditures of a recipient not later than 15 months after the initial provision of funds to the recipient.

(4) Use of funds

Funds made available to carry out this section—

(A) shall not be used to provide direct assistance to any foreign for-profit corporation for the corporation's use in promoting foreign-produced products;

(B) shall not be used to provide direct assistance to any for-profit corporation that is not recognized as a small-business concern described in section 632(a) of title 15, excluding—

- (i) a cooperative;
- (ii) an association described in section 291 of this title; and

(iii) a nonprofit trade association; and

(C) may be used by a United States trade association, cooperative, or small business for individual branded promotional activity related to a United States branded product, if the beneficiaries of the activity have provided funds for the activity in an amount that is at least equivalent to the amount of assistance provided under this section.

(g) Level of marketing assistance**(1) In general**

The Secretary shall justify in writing the level of assistance provided to an eligible trade organization under the program under this section and the level of cost-sharing required of such organization.

(2) Limitation

Assistance provided under this section for activities described in subsection (e)(4) shall not exceed 50 percent of the cost of implementing the marketing plan, except that the Secretary may determine not to apply such limitation in the case of agricultural commodities with respect to which there has been a favorable decision by the United States Trade Representative under section 2411 of title 19. Criteria for determining that the limitation shall not apply shall be consistent and documented.

(3) Staged reduction in assistance

In the case of participants that received assistance under section 1736s of this title prior to November 28, 1990, and with respect to which assistance under this section would be limited under paragraph (2), any such reduction in assistance shall be phased down in equal increments over a 5-year period.

(Pub. L. 95-501, title II, §203, as added Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3674; amended Pub. L. 102-237, title III, §309, Dec. 13, 1991, 105 Stat. 1856; Pub. L. 103-66, title I, §1302(b)(1), Aug. 10, 1993, 107 Stat. 330; Pub. L. 103-465, title IV, §411(d), Dec. 8, 1994, 108 Stat. 4963; Pub. L. 104-127, title II, §244(a)(1), (b), Apr. 4, 1996, 110 Stat. 967, 968; Pub. L. 110-246, title III, §3102(a), June 18, 2008, 122 Stat. 1832.)

REFERENCES IN TEXT

Section 1736s of this title, referred to in subsec. (g)(3), was repealed by Pub. L. 101-624, title XV, §1572(3), Nov. 28, 1990, 104 Stat. 3702.

PRIOR PROVISIONS

A prior section 203 of Pub. L. 95-501 enacted section 1707d of this title prior to the complete revision of Pub. L. 95-501 by Pub. L. 101-624.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-246 inserted “(including commodities that are organically produced (as defined in section 6502 of this title))” after “agricultural commodities”.

1996—Pub. L. 104-127, §244(a)(1)(A), substituted “access” for “promotion” in section catchline.

Subsecs. (e)(2)(B), (f)(2)(B), (C). Pub. L. 104-127, §244(a)(1)(B), substituted “market access program” for “marketing promotion program”.

Subsec. (f)(4). Pub. L. 104-127, §244(b), added par. (4). 1994—Subsec. (c). Pub. L. 103-465, §411(d)(1), struck out par. (1) designation and heading, redesignated sub-

pars. (A) to (C) of former par. (1) as pars. (1) to (3), respectively, and realigned margins, and struck out former par. (2) which related to assistance to counter or offset adverse effects of subsidy, import quota, or other unfair trade practice of foreign country, except in the case of activities conducted by small entities operating through regional State-related organizations.

Subsec. (f)(2)(C) to (E). Pub. L. 103-465, §411(d)(2), inserted “or” at end of subpar. (C), redesignated subpar. (E) as (D), and struck out former subpar. (D) which read as follows: “the unfair trade practice that was the basis of the provision of assistance has been discontinued and marketing assistance is no longer required to offset its effects; or”.

1993—Subsec. (c)(2). Pub. L. 103-66 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The Secretary shall provide export assistance under this section on a priority basis in the case of an unfair trade practice.”

1991—Subsec. (g)(3). Pub. L. 102-237 substituted “November 28, 1990,” for “the date of enactment of this Act”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date of entry into force of the WTO Agreement with respect to the United States (Jan. 1, 1995), except as otherwise provided, see section 451 of Pub. L. 103-465, set out as an Effective Date note under section 3601 of Title 19, Customs Duties.

PROHIBITION ON ASSISTANCE TO MINK ASSOCIATIONS

Pub. L. 105-277, div. A, §101(a) [title VII, §718], Oct. 21, 1998, 112 Stat. 2681, 2681-27, as amended by Pub. L. 106-31, title V, §5001(b), May 21, 1999, 113 Stat. 109, provided that: “Hereafter, none of the funds made available in annual appropriations Acts may be used to provide assistance to, or to pay the salaries of personnel to carry out a market promotion/market access program pursuant to section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623) that provides assistance to the United States Mink Export Development Council or any mink industry trade association.”

SECRETARIAL ACTIONS TO ACHIEVE SAVINGS IN MARKET ACCESS PROGRAM; REGULATIONS

Pub. L. 103-66, title I, §1302(b), (c), Aug. 10, 1993, 107 Stat. 330, 331, as amended by Pub. L. 104-127, title II, §244(a)(2)(A)(ii), Apr. 4, 1996, 110 Stat. 968, provided that:

“(b) SECRETARIAL ACTIONS TO ACHIEVE SAVINGS.—In order to enable the Secretary of Agriculture to achieve the savings required in the market access program established by section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623) as a result of the amendments made by this section [amending this section and section 5641 of this title]:

“(1) UNFAIR TRADE PRACTICES.—[Amended subsec. (c)(2) of this section.]

“(2) GUIDELINES.—The Secretary of Agriculture should implement changes in the market access program established by section 203 of such Act, beginning with fiscal year 1994, in order to improve the effectiveness of the program and to meet the following objectives:

“(A) PRIORITY.—In providing assistance for branded promotion, the Secretary should give priority to small-sized entities.

“(B) GRADUATION.—The Secretary should not provide assistance under the program to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the program.

“(C) CONTRIBUTION LEVEL.—

“(i) IN GENERAL.—The Secretary should require a minimum contribution level of 10 percent from an eligible trade organization that receives assistance for nonbranded promotion.

“(ii) INCREASES IN CONTRIBUTION LEVEL.—The Secretary may increase the contribution level in any subsequent year that an eligible trade organization receives assistance for nonbranded promotion.

“(D) ADDITIONALITY.—The Secretary should require each participant in the program to certify that any Federal funds received supplement, but do not supplant, private or third party participant funds or other contributions to program activities.

“(E) INDEPENDENT AUDITS.—If as a result of an evaluation or audit of activities of a participant under the program, the Secretary determines that a further review is justified in order to ensure compliance with the requirements of the program, the Secretary should require the participant to contract for an independent audit of the program activities, including activities of any subcontractor.

“(3) TOBACCO.—No funds made available under the market access program may be used for activities to develop, maintain, or expand foreign markets for tobacco.

“(c) REGULATIONS.—Not later than 90 days after the date of enactment of this Act [Aug. 10, 1993], the Secretary of Agriculture shall issue regulations to implement this section [amending this section and section 5641 of this title] and the amendments made by this section.”

§ 5624. Barter of agricultural commodities

(a) In general

The Secretary or the Commodity Credit Corporation may provide eligible commodities in barter for foreign products under such terms and conditions as the Secretary or the Corporation shall prescribe.

(b) Eligible commodities

Unless otherwise specified, eligible commodities shall include—

(1) agricultural commodities acquired by the Commodity Credit Corporation through price support operations; and

(2) agricultural commodities acquired by the Secretary or the Commodity Credit Corporation in the normal course of business and available for disposition.

(c) Barter by exporters of agricultural commodities

(1) Purpose

The Secretary or the Commodity Credit Corporation shall encourage exporters of agricultural commodities to barter such commodities for foreign products—

(A) to acquire such foreign products needed by such exporters; and

(B) to develop, maintain, or expand foreign markets for United States agricultural exports.

(2) Eligible activities

The Secretary or the Commodity Credit Corporation may provide eligible commodities to exporters to assist such exporters in barter transactions.

(3) Technical assistance

The Secretary or the Commodity Credit Corporation shall provide technical advice and assistance relating to the barter of agricultural