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ADS Chapter 225

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

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ADS 225 – Program Principles for Trade and Investment Activities and the
“Impact on U.S. Jobs” and “Workers’ Rights”
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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: 08/08/2019

USAID's strategy to promote economic growth and reduce poverty encourages the integration of developing countries into the global economy. 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 Section 601 of 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 on Jobs in the United States,” “Surplus Commodities,” and internationally recognized workers’ rights, recurring provisions in USAID appropriations and U.S. trade acts. This chapter supersedes USAID Policy Determination (PD) 20 -- “U.S. Programs and U.S. Jobs.” This chapter is aligned with project design requirements in [ADS 201, Program Cycle Operational Policy](#) and [ADS 300, Agency Acquisition and Assistance \(A&A\) Planning](#), and provides further guidance on the annual statutory checklist question on adverse economic impact on the U.S. 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;
- b. Contribute to violations of internationally recognized workers' rights defined in [19 U.S.C. 2467\(4\)](#);
- c. Provide financial incentives for entities located outside the United States to relocate or transfer jobs from the United States to other countries or provide financial incentives that would adversely affect the labor force in the United States; and/or
- d. Provide assistance for enforcement of certain Overseas Private Investment Corporation (OPIC), Export-Import Bank, or other rules if the enforcement would prohibit certain coal-fired or other power-generation projects.

For more background on relevant legislation on trade and investment-related activities, see [ADS 225saa, Brief History on Legislation Governing Trade- and Investment-Related Activities and “Impact on Jobs in the United States” and “Workers’ Rights” Provisions](#).

225.2 PRIMARY RESPONSIBILITIES

Effective Date: 01/19/2021

- a. The **Bureau for Development, Democracy, and Innovation (DDI)** provides technical advice to Operating Units on designing and implementing trade and investment activities that comply with this ADS chapter.
- b. **Operating Units (OUs)** design, approve, monitor, and implement trade and investment-related activities in compliance with the requirements in this ADS chapter and as part of the project design process in [ADS 201, Program Cycle Operational Policy](#). In order to comply with the requirements regarding U.S. jobs effects, OUs must specify activity plans to a sufficient level of detail to allow categorization into one of the three main categories as described in section **225.3.1.3**, and to support analysis if their plans fall under the gray area category. OUs must document the categorization process, any analysis conducted, and the final decision on whether to proceed with the proposed activity.
- c. The **Office of the General Counsel (GC)** and/or the **Regional Legal Officer (RLO)** advises OUs on whether a proposed activity meets the requirements of the law and this ADS 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: 08/08/2019

The U.S. vision of the world economy seeks to expand global trade and bring the benefits of international trade to developing countries. The U.S. National Security Strategy notes that “Stable, prosperous and friendly states enhance American security and boost U.S. economic opportunities.” [USAID’s Private Sector Engagement Policy](#) also emphasizes the importance of strengthening private sector engagement in foreign assistance.

225.3.1.2 Scope of Activity Design

Effective Date: 08/08/2019

OUs have authority and accountability to design and implement a broad spectrum of trade and investment activities.

225.3.1.3 Determination of Allowable Activities

Effective Date: 08/08/2019

“Trade and investment” activities are classified in 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 doubt about whether a specific activity involves trade and investment activities, the OU must consider the activity to involve trade and investment activities and analyze the activity under this ADS chapter. OUs can classify trade and investment activities and conduct an analysis at any time, starting from pre-design to post-award implementation, provided they have the appropriate information to decide on the scope of any given activity. Mission Economists and Private Enterprise Officers are likely to have the appropriate skills and knowledge for completing this analysis.

225.3.1.4 Permitted Activities

Effective Date: 08/08/2019

Permitted activities, even though they have a trade or investment orientation, by nature are only indirectly linked to any one sector or industry. They present a low risk of being directly linked to a potential relocation of U.S. jobs. These activities do not require further review and may be funded without additional implementation controls. The following is the full list of permitted activities. Before OUs classify an activity as permitted, it must unquestionably fall under one of these following categories:

- Legal, regulatory, policy, and judicial reform activities that are non-product specific, including those explicitly aimed at improving the domestic business and economic climate within the country, and including those aimed at improving financial and capital markets and doing business generally; provided, however, that the support is not through an investment promotion agency;
- Dissemination and analysis of information regarding the general economic and business climate in a country;
- Strengthening business associations and trade associations without sectoral targeting;
- Microenterprise and small business development without sectoral targeting;

- Activities to improve non-sector specific education - such as math, science, language, or reading - intended to imbue beneficiaries with skills that are generally transferrable across sectors;
- Activities to promote regional trade facilitation between target countries, improving trade processes and regulations, and building national and regional institutions' capacity;
- Activities to improve health and nutrition services;
- Capital projects designed to improve the basic productive capacity of a country or enhance the ability to provide services;
- Activities within the domestic financial services sector, such as to improve national payment systems or capacity building; and
- Land and property rights activities intended to improve land tenure security or land governance that are not directly focused on the productive value of the land; examples include (i) refining the legal, regulatory, institutional, and procedural environment related to land and property rights; (ii) improving surveying and mapping techniques or developing and implementing a new land information management system; (iii) training of officials or sensitization of the public regarding land rights or land governance systems; or (iv) formalizing or clarifying land rights and boundaries within an identified area.

225.3.1.5 Prohibited Activities

Effective Date: 08/08/2019

Prohibited activities represent a high risk of being directly linked to a potential relocation of U.S. jobs. These activities must not be funded under any circumstances. The following is a list of prohibited activity areas:

- Financial incentives to relocate;
- 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 whose mission involves offering incentives to relocate U.S. jobs or production to the host country; and
- General budget support for an organization, such as an investment promotion agency or a chamber of commerce, if it engages in any prohibited activity.

225.3.1.6 Gray-Area Activities

Effective Date: 08/08/2019

Gray-area activities are those that, at first glance, are neither permitted nor prohibited. Gray-area activities are generally permitted, provided that OUs conduct the analytical review in **225.3.1.7** before funding the activity and design and implement the activity so that it does not contain or evolve into prohibited elements. Activities subject to such analysis fall into two broad categories: (1) activities that result directly in the production of a good or service, and (2) activities that support any entity engaged in trade and investment activities in relation to the host country.

When activities fall in the gray area, OUs must discuss the proposed activities with Regional Bureau program office staff.

225.3.1.7 Analytical Procedures for Gray-Area Activities

Effective Date: 08/08/2019

1) Activities resulting in the production of a good or service in the host country.

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

- Will the good or service compete with a good or service produced in the U.S., *i.e.*,:
 - a. Will it be exported to or marketed in the United States, or
 - b. Will it displace exports or a marketed service by a U.S. company in the host or third country?
- Is the good or service in a declining sector in the U.S., or will the activity halt or reverse any U.S.-based growth?

If both steps in the analysis are answered in the affirmative, then the OU must not support the activity. If the good or service will compete with a similar one produced in the U.S. but the activity will not halt or reverse any U.S.-based growth, the OU may support the activity. In addition, in determining whether an activity may receive assistance, OUs should consider the potential range of viewpoints of USAID's stakeholders toward any perceived adverse effect on a good or service produced in the U.S.

The analysis must 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, and 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.

To conduct the analysis, the OU must start with the following steps:

a. The Existence of Competition - Inside or Outside the U.S.

The first step of the analysis determines whether USAID funds would assist in the production of a good or service that may compete with a U.S. produced good or service. The purpose of this analysis is to determine whether competition may arise between the good or service benefitting from USAID support and a U.S. good or service, either in the U.S. market, the host country market, or a third-country market. Absent competition, USAID support is not likely to cause U.S. job loss or displace U.S. production. This stage of analysis does not consider the scope of the competition, or the effect, but only on whether competition, real or potential, may exist.

To be potentially subject to prohibition, the competition resulting from USAID support must be direct. In other words, a supported good or service must be the same good or service or a perfect substitute, in economic terms, for a good or service produced in the U.S.

It can be difficult to define which U.S. goods or services may be affected by an activity, and to project future market trends with respect to competition that may result from supporting the development of a good or service. The analysis under this section must be comprehensive and focus on the range of factors that may demonstrate or be indicative of potential competition that may arise as a result of assistance. The analysis should include, but need not be limited, to the following factors:

- What is the market for the supported good or service?
- Is there a good or service produced in the U.S. that is a perfect substitute for the supported good or service?
- Could the supported good or service enter the local or international market and be considered a perfect substitute for a U.S. good or service?

- What is the economic or financial justification for the activity; *i.e.*, is the success of the activity dependent upon increased competition with a U.S. good or service?
- Is the U.S. or its foreign market competitively positioned or a natural target or market for the supported good or service?

This competition may occur either in the U.S., in the host country, or a third country. The competition may result from exports from the host country into the U.S. or a third country, or may occur in the host country between the supported good or service and an import into that country from the U.S.

Because information at this stage will be pre-decisional, the proposed activity must be treated as confidential when engaging with parties outside USAID, with the exception of the implementing partner in case of an already awarded contract or agreement. Outreach to third parties must be general in nature. Research must focus on securing economic and other industry information to determine whether a competing U.S. industry or service exists, but in so doing as little information as possible must be divulged as to the type, scale, or location of the activity.

b. The Health of the U.S. Sector

If analysis according to (a) above finds no competition, no further analysis is needed. If competition has been identified in accordance with (a) above, the OU must then analyze the U.S. industry that is affected by that competition. Under this analysis, the OU must determine the health of the U.S. sector, and whether that sector is susceptible to the competition that may arise from USAID assistance, *i.e.*, whether it is growing, stable, or declining. In conducting this analysis, OUs must determine whether the good or service is in a growing sector and the competition from the potential activity will not halt or reverse that growth, determine that there is a declining sector that is sensitive or vulnerable to competition and is liable to suffer or is currently suffering job loss or production displacement, or confirm that there is a relatively stable sector.

In general, a growing market is not likely to suffer job loss or production displacement as a result of competition. If the U.S. industry is healthy, (*i.e.*, competitive and growing that is characterized by strong and/or increasing demand) it is unlikely that goods or services benefitting from USAID assistance would have a negative impact on U.S. jobs or would displace U.S. production. Such a good or service would likely instead fill growing demand. If the sector is declining, it will most likely suffer job displacement from competition. If it is stable, the analyst must use his/her judgment to consider the balance of impact from competition, using the below factors.

A loss of jobs or production will occur if the activity causes any of the following:

- Offshoring of U.S. production;
- An absolute decrease in U.S. production value; and
- An absolute decrease in U.S. jobs. For example, if the activity causes an increase in U.S. jobs in some other industry or sector of the economy, the net employment effect is not relevant to the analysis; only the absolute job loss should be considered in the analysis.

If the good or service is not intended for export to or marketing in the United States, the team must determine whether the activity would affect exports of that good or service from the United States and result in a loss of U.S. jobs or production. The team must examine the destination market for the supported good or service, in which analysis may include:

- The importance to U.S. industry of the market where the supported goods or services will be sold: Does the U.S. export significant amounts of the product to this market(s) compared to other markets? If yes, it is likely that any possible export displacement would have a material impact on U.S. production.
- Importance of export earnings to the U.S. industry: Does the U.S. export a significant amount of the product to the target market(s), but total U.S. exports represent a very small percentage of total U.S. production? If yes, the U.S. industry is not heavily reliant on export earnings and it would be unlikely that the activity's production would have a negative impact on U.S. production.

If there is not a reasonable likelihood that relocation could take place as a result of the activity, nor that U.S. jobs would be lost, then the OU 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.-based business and loss of U.S. jobs, then the OU cannot fund the activity unless it can modify the design or implementation activity to eliminate the likelihood that relocation would take place.

2) Investment Promotion Agencies

A separate analysis is required for activities that support government agencies engaged in trade and investment activities in a host country (such an investment promotion agency is referred to as an "IPA"). If such assistance is designed to specifically support a permitted activity, and that support is accomplished narrowly through an IPA, no further analysis is required. If such assistance is designed to support a prohibited activity, the activity may not move forward and no further analysis is required. However,

if such assistance is generally aimed at supporting an IPA and may lead to the production of a good or service, the OU must analyze that activity pursuant to this subsection to determine whether that investment would be permitted.

The analysis contains three steps: (1) identify that USAID assistance would be provided to an IPA and that the assistance is not narrowly focused on a permitted activity; (2) determine the level of significance of exports from the host country to the U.S. or U.S. direct investment ("USDI") into that country; and (3) conduct an analysis (under number 1) of this section **225.3.1.7** to determine whether USAID support for a resulting good or service from that sector is prohibited, if the U.S. is not a significant target of the IPA.

a. IPA Assistance Determination

The first step requires OUs to determine if assistance will support an IPA. At this stage of the analysis, the target export market or the source of the investment is not relevant. If funding would support an IPA, the OU moves to the second step.

b. Economic Significance of U.S. Market

The second step requires the OU to determine the economic significance of the U.S. to the host country. If the U.S. receives more than 10 percent of a host country's total exports or if USDI in the host country is more than 10 percent of the country's total foreign direct investment, the economic nexus to the U.S. is significant and the IPA support must not move forward. The justification for this prohibition is that above this 10 percent threshold, the economy of the host country is inextricably linked with the U.S. economy, and assistance to the IPA would naturally result in that IPA targeting the U.S. in its efforts. Therefore, the success of the activity would be based on the ability of that IPA to increase USDI or export to the U.S. An exception to the significant prohibition would exist when the predominant majority of the USDI or exports is in a good or service that does not compete with a good or service produced in the U.S.

If the economic nexus is not significant as defined above, the OU moves to the third step.

c. Goods or Service Analysis

The third step of the analysis requires the OU to determine whether the IPA support is intended to result in increased exports/investments in particular goods and services. If so, the OU must analyze such goods and services (under number 1) of this section **225.3.1.7** to determine whether the activity can move forward. The objective of this is to ensure that the IPA will not facilitate the export of USDI in the production of a good or service that may result in a loss of U.S. jobs or displacement of U.S. production.

Documentation of this section (**225.3.1.7**) review must be included in the approval package for each relevant activity. Documentation must be maintained in any resulting activity files (GC or the RLO will verify this when clearing the package).

225.3.1.8 Required Clause for Gray-Area Activities

Effective Date: 08/08/2019

For gray-area activities or trade and investment-related activities where specific activities are not identified at the time of obligation, OUs must include the relevant clause or provision or a substantially similar alternative prohibiting the recipient or contractor from implementing prohibited activities under this chapter in grants, cooperative agreements, and contracts to private entities per [AIDAR 726.71](#) and [ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations](#); public international organizations per [ADS 308, Agreements with Public International Organizations](#); and foreign governments and in interagency obligating agreements per [ADS 306, Interagency Agreements](#).

A clause is not required for a permitted activity, but an OU may include such a clause at its discretion. The Agreement Officer or Contracting Officer is authorized to use a substantially similar alternative clause or to insert key portions of the clause into implementation letters or comparable subsidiary documents.

225.3.2 Internationally Recognized Workers' Rights

Effective Date: 08/08/2019

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 a prohibition on the worst forms of child labor; and
- e. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The last right (e) may be applied commensurate with the development of the country, and does not preclude an activity for the informal sector in a country, micro and small-scale enterprise, and smallholder agriculture.

Operating Units must review any activities that involve employment of workers to ensure that they do not contribute to a violation of the above internationally recognized workers' rights. In most cases, adherence to local labor laws will effectively address these issues. OUs are encouraged to refer to Section 7 of the [State Department annual "Country Reports on Human Rights Practice"](#) for their respective country for guidance on whether national laws are considered by the U.S. Government as providing sufficient coverage for internationally-recognized workers' rights. The annual reports can be found at www.state.gov. "Annex B: Reporting on Worker Rights" provides relevant background about the "Worker Rights" section of the annual "Country Reports on Human Rights Practice."

In addition, recognizing that any activity that employs workers may be considered as a relevant activity, OUs may take steps to verify that grants and cooperative agreements contain clauses ensuring that grantees exercise internal due diligence measures and/or have in place corporate policies that reinforce adherence to labor laws.

225.3.3 Branding, Marking Requirements, and Communications

Effective Date: 08/08/2019

Operating Units must 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: 08/08/2019

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: 08/08/2019

- 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: 08/08/2019

- a. [ADS 201, Program Cycle Operational Policy](#)
- b. [ADS 300, Agency Acquisition and Assistance \(A&A\) Planning](#)
- c. [ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations](#)
- d. [ADS 306, Interagency Agreements](#)
- e. [ADS 308, Agreements with Public International Organizations](#)
- f. [AIDAR 726.71](#)

225.5 ADDITIONAL HELP

Effective Date: 08/08/2019

- 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: 08/08/2019

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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