

“(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. Agricultural trade promotion and facilitation**

**(a) Establishment**

The Secretary shall carry out activities under this section—

(1) to access, develop, maintain, and expand markets for United States agricultural commodities; and

(2) to promote cooperation and the exchange of information.

**(b) Market Access Program**

**(1) Definition of eligible trade organization**

In this subsection, the term “eligible trade organization” means—

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

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

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

**(2) In general**

The Commodity Credit Corporation shall establish and carry out a program, to be known as the “Market Access Program”, to encourage the development, maintenance, and expansion of commercial export markets for United States 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.

**(3) Participation requirements**

**(A) Marketing plan and other requirements**

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

(i) prepare and submit a marketing plan to the Secretary that meets the guidelines governing such a marketing plan specified in this paragraph or otherwise established by the Secretary;

(ii) meet any other requirements established by the Secretary; and

(iii) enter into an agreement with the Secretary.

**(B) Purpose of marketing plan**

A marketing plan submitted under this paragraph 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 subsection is being requested.

**(C) Specific elements**

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

(i) 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;

(ii) establish specific market goals to be achieved under the marketing plan; and

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

**(D) Branded promotion**

A marketing plan approved by the Secretary may provide for the use of branded advertising to promote the sale of United States agricultural commodities in a foreign country under such terms and conditions as may be established by the Secretary.

**(E) Amendments**

An approved marketing plan may be amended by the eligible trade organization at any time, subject to the approval of the amendment by the Secretary.

**(4) Level of assistance and cost-share requirements**

**(A) In general**

The Secretary shall justify in writing the level of assistance to be provided to an eligible trade organization under this subsection and the level of cost sharing required of the organization.

**(B) Limitation on branded promotion**

Assistance provided under this subsection for activities described in paragraph (3)(D) 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 United States 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 used by the Secretary for determining that the limitation shall not apply shall be consistent and documented.

**(5) Other terms and conditions**

**(A) Multiyear basis**

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

**(B) Termination of assistance**

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

- (i) the eligible trade organization is not adhering to the terms and conditions applicable to the provision of the assistance;
- (ii) the eligible trade organization is not implementing the approved marketing plan or is not adequately meeting the established goals of the plan;
- (iii) the eligible trade organization is not adequately contributing its own resources to the implementation of the plan; or
- (iv) the Secretary determines that termination of assistance in a particular instance is in the best interests of the Market Access Program.

**(C) Evaluations**

Beginning not later than 15 months after the initial provision of assistance under this subsection to an eligible trade organization, the Secretary shall monitor the expenditures by the eligible trade organization of such assistance, including the following:

- (i) An evaluation of the effectiveness of the marketing plan of the eligible trade organization in developing or maintaining markets for United States agricultural commodities.
- (ii) An evaluation of whether assistance provided under this subsection is necessary to maintain such markets.
- (iii) A thorough accounting of the expenditure by the eligible trade organization of the assistance provided under this subsection.

**(6) Restrictions on use of funds**

Assistance provided under this subsection to an eligible trade organization may not be used—

- (A) to provide direct assistance to any foreign for-profit corporation for the corporation's use in promoting foreign-produced products; or
- (B) to provide direct assistance to any for-profit corporation that is not recognized as a small business concern (as described in section 632(a) of title 15), excluding—
  - (i) a cooperative;
  - (ii) an association described in section 291 of this title; or

- (iii) a nonprofit trade association.

**(7) Permissive use of funds**

Assistance provided under this subsection to a United States agricultural trade association, cooperative, or small business may be used 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 such assistance.

**(8) Priority**

In providing assistance for branded promotion, the Secretary should give priority to small-sized entities.

**(9) Contribution level**

**(A) In general**

The Secretary should require a minimum contribution level of 10 percent from an eligible trade organization that receives assistance for nonbranded promotion.

**(B) 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.

**(10) Additionality**

The Secretary should require each participant in the Market Access 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.

**(11) Independent audits**

If as a result of an evaluation or audit of activities of a participant under the Market Access 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.

**(12) 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) Foreign Market Development Cooperator Program**

**(1) Definition of eligible trade organization**

In this subsection, the term “eligible trade organization” means a United States trade organization that—

- (A) promotes the export of 1 or more United States agricultural commodities; and
- (B) does not have a business interest in or receive remuneration from specific sales of agricultural commodities.

**(2) Establishment**

The Secretary shall establish and, in cooperation with eligible trade organizations, carry out a program to be known as the “Foreign Market Development Cooperator Pro-

gram” to maintain and develop foreign markets for United States agricultural commodities.

**(3) Use of funds**

Funds made available to carry out this subsection shall be used only to provide—

(A) cost-share assistance to an eligible trade organization under a contract or agreement with the eligible trade organization; and

(B) assistance for other costs that are appropriate to carry out the Foreign Market Development Cooperator Program, including contingent liabilities that are not otherwise funded.

**(d) E (Kika) de la Garza Emerging Markets Program**

**(1) Definition of emerging market**

In this subsection, the term “emerging market” means any country, foreign territory, customs union, or other economic market that the Secretary determines—

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

(B) has the potential to provide a viable and significant market for United States agricultural commodities.

**(2) Establishment**

The Secretary shall establish and carry out a program, to be known as the “E (Kika) de la Garza Emerging Markets Program”—

(A) to develop agricultural markets in emerging markets; and

(B) to promote cooperation and exchange of information between agricultural institutions and agribusinesses in the United States and emerging markets.

**(3) Development of agricultural systems**

**(A) In general**

**(i) Implementation**

To develop, maintain, or expand markets for exports of United States agricultural commodities, the Secretary shall make available to emerging markets the expertise of the United States—

(I) to make assessments of food and rural business systems needs;

(II) to make recommendations on measures necessary to enhance the effectiveness of the food and rural business systems described in subclause (I), including potential reductions in trade barriers; and

(III) to identify and carry out specific opportunities and projects to enhance the effectiveness of the food and rural business systems described in subclause (I).

**(ii) Extent of program**

The Secretary shall implement this subparagraph with respect to at least 3 emerging markets in each fiscal year.

**(B) Experts from the United States**

The Secretary may implement subparagraph (A) by providing—

(i) assistance to teams (consisting primarily of agricultural consultants, agricultural producers, other persons from the private sector, and government officials expert in assessing the food and rural business systems of other countries) to enable those teams to conduct the assessments, make the recommendations, and identify the opportunities and projects described in subparagraph (A)(i) in emerging markets;

(ii) for necessary subsistence and transportation expenses of—

(I) United States food and rural business system experts, including United States agricultural producers and other United States individuals knowledgeable in agricultural and agribusiness matters, to enable such United States food and rural business system experts to assist in transferring knowledge and expertise to entities from emerging markets; and

(II) individuals designated by emerging markets to enable such designated individuals to consult with such United States experts to enhance food and rural business systems of such emerging markets and to transfer knowledge and expertise to such emerging markets.

**(C) Cost-sharing**

The Secretary shall encourage the non-governmental experts described in subparagraph (B) to share the costs of, and otherwise assist in, the participation of those experts in the E (Kika) de la Garza Emerging Markets Program.

**(D) Technical assistance**

The Secretary is authorized to provide, or pay the necessary costs for, technical assistance (including the establishment of extension services) to enable individuals or other entities to carry out recommendations, projects, and opportunities in emerging markets, including recommendations, projects, and opportunities described in subclauses (II) and (III) of subparagraph (A)(i).

**(E) Reports to Secretary**

A team that receives assistance under subparagraph (B)(i) shall prepare and submit to the Secretary such reports as the Secretary may require.

**(F) Advisory committee**

To provide the Secretary with information that may be useful to the Secretary in carrying out this subsection, the Secretary may establish an advisory committee composed of representatives of the various sectors of the food and rural business systems of the United States.

**(G) Effect**

The authority provided under this subsection shall be in addition to and not in place of any other authority of the Secretary or the Commodity Credit Corporation.

**(e) Technical assistance for specialty crops**

**(1) Establishment**

The Secretary of Agriculture shall establish an export assistance program, in this sub-

section referred to as the “program”, to address existing or potential unique barriers that prohibit or threaten the export of United States specialty crops.

**(2) Purpose**

The program shall provide direct assistance through public and private sector projects and technical assistance, including through the program under section 3157(e) of this title, to remove, resolve, or mitigate existing or potential sanitary, phytosanitary, and technical barriers to trade.

**(3) Priority**

The program shall address time sensitive and strategic market access projects based on—

- (A) trade effect on market retention, market access, and market expansion; and
- (B) trade impact.

**(4) Multiyear projects**

The Secretary may provide assistance under the program to a project for longer than a 5-year period if the Secretary determines that further assistance would effectively support the purpose described in paragraph (2).

**(5) Outreach and technical assistance**

The Secretary shall—

- (A) conduct outreach to inform eligible organizations of the requirements of the program and the process by which such organizations may submit proposals for funding;
- (B) provide technical assistance to eligible organizations to assist in developing proposals and complying with the requirements of the program; and
- (C) solicit input from eligible organizations on improvements to streamline and facilitate the provision of assistance under this subsection.

**(6) Regulations and procedures**

**(A) In general**

Not later than 1 year after December 20, 2018, the Secretary shall review program regulations, procedures, and guidelines for assistance under this subsection and make revisions to streamline, improve, and clarify the application, approval and compliance processes for such assistance, including revisions to implement the requirements of paragraph (5).

**(B) Considerations**

In reviewing and making revisions under subparagraph (A), the Secretary shall consider—

- (i) establishing accountability standards that are appropriate for the size and scope of a project; and
- (ii) establishing streamlined application and approval processes, including for smaller-scale projects or projects to address time-sensitive trade barriers.

**(7) Annual report**

Each year, the Secretary shall submit to the appropriate committees of Congress a report that contains, for the period covered by the report, a description of—

(A) each factor that affects the export of specialty crops, including each factor relating to any—

- (i) significant sanitary or phytosanitary issue;
- (ii) trade barrier; or
- (iii) emerging sanitary or phytosanitary issue or trade barrier; and

(B)(i) any funds provided under subsection (f)(3)(A)(iv) that were not obligated in a fiscal year; and

(ii) the reason such funds were not obligated.

**(f) Funding and administration**

**(1) Commodity Credit Corporation**

The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this section.

**(2) Funding amount**

For each of fiscal years 2019 through 2023, of the funds of, or an equal value of commodities owned by, the Commodity Credit Corporation, the Secretary shall use to carry out this section \$255,000,000, to remain available until expended.

**(3) Allocation**

**(A) In general**

For each of fiscal years 2019 through 2023, the Secretary shall allocate funds to carry out this section in accordance with the following:

**(i) Market access program**

For market access activities authorized under subsection (b), of the funds of, or an equal value of commodities owned by, the Commodity Credit Corporation, not less than \$200,000,000 for each fiscal year.

**(ii) Foreign market development cooperator program**

To carry out subsection (c), of the funds of, or an equal value of commodities owned by, the Commodity Credit Corporation, not less than \$34,500,000 for each fiscal year.

**(iii) E (Kika) de la Garza Emerging Markets Program**

To provide assistance under subsection (d), of the funds of, or an equal value of commodities owned by, the Commodity Credit Corporation, not more than \$8,000,000 for each fiscal year.

**(iv) Technical assistance for specialty crops**

To carry out subsection (e), of the funds of, or an equal value of the commodities owned by, the Commodity Credit Corporation, \$9,000,000 for each fiscal year.

**(v) Priority trade fund**

**(I) In general**

In addition to the amounts allocated under clauses (i) through (iv), and notwithstanding any limitations in those clauses, as determined by the Secretary, for 1 or more programs under this sec-

tion for authorized activities to access, develop, maintain, and expand markets for United States agricultural commodities, \$3,500,000 for each fiscal year.

## (II) Considerations

In allocating funds made available under subclause (I), the Secretary may consider providing a greater allocation to 1 or more programs under this section for which the amounts requested under applications exceed available funding for the 1 or more programs.

## (B) Reallocation

Any funds allocated under clauses (i) through (iv) of subparagraph (A) that remain unobligated one year after the end of the fiscal year in which they are first made available shall be reallocated to the priority trade fund under subparagraph (A)(v). To the maximum extent practicable, the Secretary shall allocate such reallocated funds to support exports of those types of United States agricultural commodities eligible for assistance under the program for which the funds were originally allocated under subparagraph (A).

## (4) Cuba

Notwithstanding section 7207 of title 22 or any other provision of law, funds made available under this section may be used to carry out the programs authorized under subsections (b) and (c) in Cuba. Funds may not be used as described in the previous sentence in contravention with directives set forth under the National Security Presidential Memorandum entitled “Strengthening the Policy of the United States Toward Cuba” issued by the President on June 16, 2017, during the period in which that memorandum is in effect.

## (5) Authorization of appropriations

In addition to any other amounts provided under this subsection, there are authorized to be appropriated such sums as are necessary to carry out the programs and authorities under paragraph (3)(A)(v) and subsections (b) through (e).

(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; Pub. L. 115-334, title III, § 3201(a), Dec. 20, 2018, 132 Stat. 4608.)

### 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

2018—Pub. L. 115-334 amended section generally. Prior to amendment, section related to market access program.

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 subpars. (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; Pub. L. 115-334, title III, § 3201(b)(1)(D), Dec. 20, 2018, 132 Stat. 4616, 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(b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5623(b)[ ]) 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, which directed the Secretary of Agriculture to implement changes in the market access program beginning with fiscal year 1994 in order to improve the effectiveness of the program and to meet stated objectives, and required issuance of regulations not later than 90 days after Aug. 10, 1993, was repealed by Pub. L. 115-334, title III, § 3201(b)(1)(E), Dec. 20, 2018, 132 Stat. 4616.

## § 5624. Barter of agricultural commodities

### (a) In general

The Secretary or the Commodity Credit Corporation may provide eligible commodities in