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FY2005-FY2010

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May 25<sup>th</sup>, 2011

**By Electronic Mail**

Re:    Freedom of Information Act ("FOIA") request 2011-020

Thank you for your FOIA request to the U.S. Trade and Development Agency dated 5/15/2011 which we received on 5/19/2011, in which you asked for, "an electronic copy of the following records found on the USTDA intranet website:

1.   FY 2011 Agency Strategic Plan
2.   Appropriations Memos for FY05-FY10"

In accordance with FOIA, the Agency has conducted a reasonable search for the records. All responsive records are being released in their entirety and are enclosed. No other responsive records were found.

Thank you for your inquiry. There is no charge for this search.

Sincerely,

A handwritten signature in black ink, appearing to read "Alain Lopez", is written over the typed name.

Alain Lopez  
Assistant General Counsel

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# U.S. TRADE AND DEVELOPMENT AGENCY



**FY 2011**

**Strategic Plan**

*The U.S. Trade and Development Agency helps companies create U.S. jobs through the export of U.S. goods and services for priority development projects in emerging economies. USTDA links U.S. businesses to export opportunities by funding project planning activities, pilot projects, and reverse trade missions while creating sustainable infrastructure and economic growth in partner countries.*

# U.S. Trade and Development Agency

## STRATEGIC PLAN FOR FISCAL YEAR 2011

### INTRODUCTION

Each year the U.S. Trade and Development Agency (USTDA) conducts an assessment of its ongoing programs and projects to determine the Agency's overall effectiveness and responsiveness to U.S. industry, U.S. foreign policy priorities, and emerging market needs. USTDA extensively reviews its past performance by country and sector, and examines its hit rate, export multiplier, and the developmental impacts of its program. Using this data, the Agency is able to determine how successful it has been in carrying out its mission to promote sustainable economic growth in developing and middle-income countries while supporting U.S. exports and ultimately creating U.S. jobs.

The FY 2011 Strategic Plan is the result of significant collaboration and research on the part of USTDA's senior management, regional directors, evaluations and program staff. Through a series of meetings rigorously studying the Agency's core performance data, newly revised sector performance reports, and input received from the U.S. private sector as well as other USG agencies, the Agency has designed its FY 2011 Strategic Plan in a manner that seeks to ensure measurable results and fulfill the Agency's mission. Specifically, the FY 2011 Strategic Plan emphasizes the Obama Administration's foreign assistance and trade priorities and takes into consideration the Agency's budgetary and staff resources. It builds upon the solid performance of the Agency in FY 2010 and is aligned with the development priorities of the United States, the multilateral development banks, and the needs of USTDA's private and public sector clients, both foreign and domestic.

### FY 2010: A Year in Review

USTDA had a banner year in FY 2010 filled with many new changes. With the confirmation of the Agency's new Director Leocadia Zak, the launch of the National Export Initiative and the addition of USTDA to the President's Export Promotion Cabinet, the inclusion of the Agency in several Presidential delegations, and the successful commencement of new and innovative programs like the International Business Partnership Program (IBPP), USTDA has achieved many new accomplishments in FY 2010 of which it should be very proud. In addition to these accomplishments, the Agency succeeded in implementing a new strategic plan that took a more targeted approach to delivering assistance and streamlined the Agency's country and sector focus. USTDA highlighted 24 priority countries (out of 131 countries eligible for USTDA assistance) and three priority sectors with an additional sector for special consideration that offered the best prospects for U.S. exports and job growth and overseas economic development in its FY 2010 Strategic Plan that would form the basis of the Agency's program.

**FY 2010 Strategic Investments****Priority Countries: \$41,833,158 (84.6%)****ICT: \$7,021,304 (14%)****Transportation: \$10,942,452 (22%)****Clean Energy/ Energy Efficiency: \$22,922,264 (46%)****Environment and Water: \$3,153,826 (7%)****Overall Success Rates****Export Multiplier: 47 to 1****Hit Rate: 38.5%****Total Exports to Date: \$35.7 billion**

The results of this strategic shift were impressive. USTDA's total obligations in its 24 priority countries increased from 62.3% of the Agency's total program obligations in FY 2009 to 84.6% of the total program obligations in FY 2010 (see Annex 2). Some notable examples include Pakistan, where obligations increased by \$4.3 million (600%); Kazakhstan, where obligations increased by \$2.1 million (304%); and Nigeria, where obligations increased by \$2.5 million (3,402%). Regarding the FY 2010 priority sectors, ICT sector investments increased from 10% of the FY 2009 program obligations to 14% of the FY 2010 program obligations, and clean energy/energy efficiency sector investments increased from 23% of the FY 2009 program obligations to 46% of the FY 2010 program obligations. It is reasonable to expect that with the increased investments in the clean energy and ICT sectors, the transportation sector, which has historically been the largest sector for USTDA investments, experienced a decline in FY 2010 from 38% of the FY 2009 program obligations to 22% of the FY 2010 program obligations. In the environment and water sector, which was an area of special consideration for the Agency, USTDA's investments for FY 2010 declined to a total of 7% of its program obligations as opposed to 10% of its program obligations in FY 2009. Graphic representations of USTDA's 2010 progress in its priority countries and sectors can be found in Annexes 1 and 2.

USTDA also improved its export multiplier in FY 2010, raising the ratio of U.S. exports to 47 to 1, meaning for every dollar USTDA invests it generates \$47 dollars in U.S. exports. The Agency also maintained a strong hit rate of 38.5%. USTDA anticipates that its strategic investments in FY 2010 and its increased focus on trade promotion activities including reverse trade missions will further increase the Agency's hit rate and export multiplier for years to come.

## THE AGENCY'S VISION AND GOALS FOR FY 2011

Coming off of an excellent year of success, the Agency is well positioned to improve its programs and visibility in FY 2011. The Agency's move to a more strategic approach in FY 2010 focusing on priority sectors and countries allowed the Agency to concentrate its programs in key emerging markets and has helped USTDA brand its distinctive type of foreign assistance in these markets. This targeted approach also has helped USTDA establish a footprint in these markets that has raised the visibility of the Agency's programs and has created greater demand for USTDA's assistance.

Continuing this positive momentum into FY 2011 is one of the key goals for the Agency. Therefore, to kick-off the new fiscal year the Agency has revised its mission statement to more succinctly describe its mission. The new mission statement reflects the Agency's dual mission and emphasizes USTDA's critical role in generating U.S. exports supporting U.S. jobs. These core principles have shaped the Agency's vision for FY 2011 and form the foundation of this year's strategic plan.

As the Agency prepares for FY 2011, it must align its programmatic resources with budgetary resources. To start the new fiscal year, USTDA has decided to reorganize its regional programs to better align program priorities and resource allocations to achieve the Agency's mission. Beginning October 1, 2010 the Eastern Europe region including the Baltic States and Turkey will be folded into the Middle East and North Africa region; the Central Asia region including the Commonwealth of Independent States (CIS), Georgia, and Ukraine will fall under the responsibility of the Regional Director for the East Asia region; and Afghanistan will be transferred to the South and Southeast Asia region, which will place Afghanistan and Pakistan in the same region. The new regional reconfigurations will streamline the Agency's structure, and it will enable USTDA to focus on those areas that are most likely to contribute to the overall success of the Agency recognizing budgetary constraints throughout the government.

FY 2011 promises to be another fruitful year, and USTDA's staff is eager to get started. With the new mission statement and regional reorganization in place, the Agency's staff is excited to take on new challenges and meet and/or exceed its goals for FY 2011. The Agency will continue to focus on priority countries and key sectors for development throughout FY 2011 with the hope of exceeding the results from FY 2010. The Agency will also continue to address the Administration's policy priorities which are discussed in greater detail below. However, as with any new strategic plan, USTDA must remember its core goals and ultimately support the Agency in fulfilling its mission. USTDA and its staff will:

1. Seek out and fund projects that have a high probability for implementation and will produce U.S. exports and developmental benefits. Specifically, the Agency will look for projects that are mutually beneficial for the host country and the U.S. business community – this will support USTDA's healthy export multiplier as well as foster sustainable host country development;
2. Keep the Administration's foreign policy goals in mind and utilize USTDA's programs and resources, including the Agency's close relationship to the U.S. private sector, to help advance the Administration's policy priorities;
3. Conduct outreach to the U.S. business community with a particular focus on small and minority-owned business to help them take advantage of development opportunities in emerging markets; and
4. Continue to reach out to new overseas and domestic partners to increase awareness and demand for USTDA's programs and raise the visibility of the Agency.

## Policy Priorities

In today's challenging economic environment, USTDA's unique dual mission has never been more needed to support the Administration's development efforts while simultaneously supporting U.S. exports and U.S. jobs. In FY 2011, USTDA will continue to leverage its foreign policy and trade mandate to support policy priorities of the Administration with specific emphasis on the following policy priorities.

**National Export Initiative (NEI):** USTDA is particularly well equipped in its mission, expertise, and operations to create U.S. jobs through the export of U.S. goods and services in support of the NEI, which seeks to create over 2 million jobs by doubling U.S. exports over the next five years. USTDA has already ramped up its trade promotion activities as a result of the launch of the NEI in early 2010. The Agency funded 40 reverse trade missions in FY





2010, and it is looking to increase its support for reverse trade missions and other trade promotion activities in FY 2011 under its newly developed IBPP.

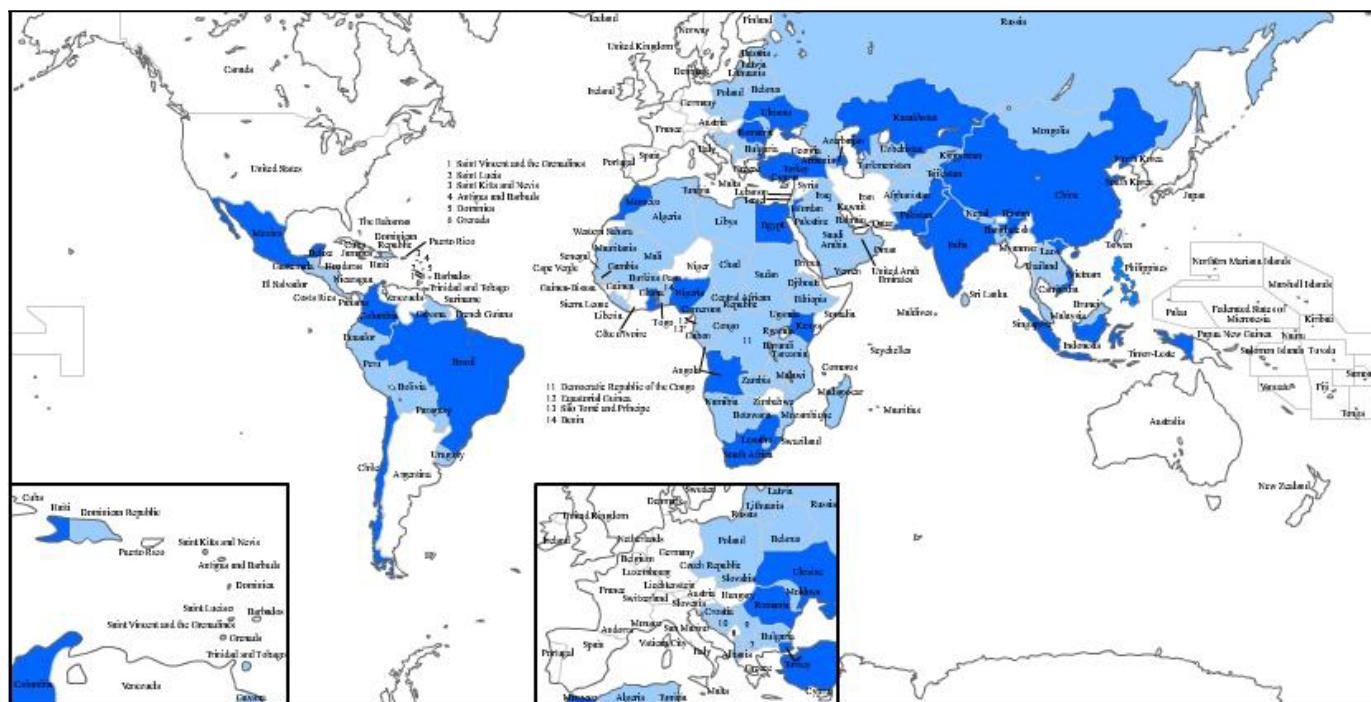
**Clean Energy and the U.S. Climate Change Agenda:** USTDA will prioritize the funding of clean energy projects in developing countries to support the Administration's goal of mitigating the negative effects of climate change and helping emerging economies develop low carbon energy sources.

**Millennium Development Goals (MDGs):** USTDA will continue to advance the United Nations Millennium Development Goals by investing in infrastructure that promotes sustainable economic growth to alleviate poverty. The majority of USTDA's project activities in the sub-Saharan Africa region are geared toward fulfilling and achieving the MDGs with a specific focus on transferring technology to support development efforts.

**Muslim-Majority Community Development:** In support of the Administration's efforts to broaden U.S. engagement with Muslim-majority communities, USTDA will continue its efforts to foster economic development in Muslim-majority countries/communities such as Jordan, Pakistan, Egypt, Morocco, Turkey, Azerbaijan, and Indonesia, all of which are USTDA priority countries for FY 2011.

### Priority Countries for FY 2011

For FY 2011, USTDA has again decided to focus on the following priority countries that offer: (1) a strong probability of project success; (2) growth potential for U.S. exports; (3) strong developmental benefits; and (4) market share growth for U.S. companies. USTDA strategically chose to maintain presence in many of the same countries it selected for FY 2010 not only because these are key markets for U.S. companies, but because USTDA has already established a strong foothold in these countries and has begun to brand its unique foreign assistance in these markets.



The priority countries for FY 2011 are:

<u>East Asia and Eurasia</u>	Jordan	Chile	Philippines
Azerbaijan *	Morocco	Colombia	Vietnam
China	Romania	Haiti	
Kazakhstan	Turkey	Mexico	<u>Sub-Saharan Africa</u>
Ukraine *	West Bank (Territory)	<u>South and Southeast Asia</u>	Angola
<u>Middle East, North Africa and Europe</u>	<u>Latin America and the Caribbean</u>	India	Ghana
Egypt	Brazil	Indonesia	Kenya
		Pakistan *	Nigeria
			Rwanda
			South Africa

\*These countries will only use transfer money to fund projects in FY 2011.

### Priority Sectors for FY 2011

After extensive research conducted by the Agency's regional teams to assess the overall demand for USTDA assistance in priority countries, as well as the U.S. private sector's competitiveness and desire for assistance in specific sectors, the Agency has decided to continue its targeted sector approach in FY 2011. In light of the overwhelming increase in requests for USTDA assistance in the areas of clean energy/energy efficiency, information and communications technology (ICT), and transportation, the Agency has decided to continue to prioritize these three sectors for FY 2011 to maintain the Agency's footprint and further develop the Agency's expertise in these areas.

While the Agency is maintaining its strategic focus on these three sectors, the Agency will continue to refine and improve its categorization and measurements for each project funded within these sectors. For FY 2011, USTDA's program and evaluations staff have worked to create better sector and sub-sector categorizations for the Agency's priority sectors, which will help USTDA as it continues to quantify and qualify projects for its required annual reports. The improved definitions and categorizations for a couple of the sectors are discussed below. For FY 2011, USTDA will target the following sectors:



**Clean Energy and Energy Efficiency:** President Obama stated the importance of creating/adding green jobs to support positive economic growth in the American economy, many of which will stem from the creation of clean energy and energy efficient technologies that will help decrease greenhouse gas emissions. U.S. companies are extremely innovative and competitive in producing clean energy/energy efficient technologies, which is why USTDA's continued investments in clean energy and energy efficient projects in emerging economies is so



important to support U.S. jobs in this sector. USTDA's investments in this sector allow the Agency to support the USG climate change agenda, spur the diversification of energy sources and the development of clean fuels in developing and middle-income countries, and promote the export of U.S. clean energy technologies.

As discussed above and as illustrated in Annex 2, the demand for USTDA assistance to help develop clean energy resources and efficiently manage current energy resources has doubled between FY 2009 and FY 2010 to nearly half of the Agency's program obligations in FY 2010. USTDA defines 'clean energy projects' as those projects pertaining to electricity generation, transmission, storage, heating, cooling, or manufacturing whose primary purpose is the deployment, development, or production of an energy system or technology that avoids, reduces, or sequesters air pollutants or greenhouse gases. The term 'energy efficiency project' means any project, technology, function, or measure that results in the reduction of energy use required to achieve the same level of service or output prior to the application of such a project, technology, function, or measure, or substantially reduces greenhouse gas emissions relative to emissions that would have occurred prior to the application of such project, technology, function, or measure. Complete definitions for both terms can be found in Annex 3.

**Transportation:** Transportation is a sector in which USTDA has vast experience and historically has been the largest sector of investment for the Agency prior to FY 2010. The establishment of a modern and efficient transportation infrastructure is particularly important for facilitating trade and development, and is also an area in which the United States is a recognized leader. In FY 2011, USTDA will continue to build upon its previous successes and support critical aviation initiatives like the China and India Aviation Cooperation Programs, the Latin America and Caribbean Aviation Cooperation Initiative and the Safe Skies for Africa Program. The Agency will also target strategic rail and port projects, which are of equal importance when trying to establish safe and secure supply chains. Therefore, USTDA will continue to work with countries to make the necessary investments in logistics and security management for rail and port development. For port specific investments, the Agency will target vessel traffic management systems, customs facilitation and overall port security projects where U.S. companies have a comparative advantage. In the rail sub-sector, USTDA will support the development of positive train control systems, efficient freight management and track maintenance systems, and signaling and communications technology.





**Information and Communications Technology (ICT):** The ICT sector has grown exponentially over the last two decades. In today's environment, every core infrastructure sector integrates and utilizes ICT. The growing global ICT market is promising for U.S. companies considering that they have long been leaders in the ICT market and are at the forefront of innovation in this sector. However, foreign competition from Asia and Europe is fierce and warrants USTDA's continued assistance in this sector. For FY 2011, USTDA anticipates supporting the development of strong voice and data networks, expanded broadband/wireless services, improved government transparency and

accountability via the implementation of e-government systems, resilient emergency management systems with centralized command and control centers, and improved power transmission and distribution systems via the implementation of smart grid ICT-based technologies.

As the ICT sector grows in complexity it will continue to cross over many industry sectors, making project categorizations difficult to discern. For strategic planning purposes and to maintain the integrity of the data provided, USTDA only counted those ICT projects that were classified within USTDA's database as primary sector telecommunications or as the primary sector services with the sub-sector listed as information technology. Going forward into FY 2011, considering the expanding nature of the ICT sector, the Agency will refine its sector and sub-sector classifications to match the complexity of the sector, which will enable the Agency to capture ICT data more effectively. Since ICT is listed as a cross-cutting sector in USTDA's database, the Agency must be careful to make sure the sector/sub-sector classifications are clearly defined (and utilized consistently) so that the risk of double counting projects is eliminated.

### Sectors of Special Consideration

In addition to the three priority sectors listed above, the Agency realizes that there are special needs within each region that may fall outside of the three priority sectors above. There are also certain sectors that represent great U.S. export opportunities for which there is growing global demand; however, due to the Agency's budgetary constraints, it cannot properly address the need for assistance in these areas. Two such sectors include health care and environment and water. Throughout the strategic planning process these two sectors were discussed at length, and the Agency has designated these two sectors as sectors of special consideration and will evaluate specific demands on a discretionary basis as follows:



**Environment and Water:** The need for environmental technologies, which according to some estimates produced \$35 billion in U.S. exports in 2009, is growing in many emerging economies. Most notably, in the Middle East the need for improved access to clean water and water conservation technologies is acute. Yemen is considered by the World Bank to be "one of the most water-scarce countries in the world,"

where only 125 cubic meters of water are available yearly per capita compared to the world average of 2,500 cubic meters. Access to potable water and conserving scarce water resources has become a global problem affecting countries throughout Asia, parts of Latin America and the Caribbean, and sub-Saharan Africa. Therefore, for FY 2011, USTDA will continue to support environment/water projects on an as needed basis based upon the developmental priority of the projects and their ability to satisfy USTDA's primary funding criteria.

**Health Care:** The United States is the widely acknowledged world leader in medical technology, producing nearly half of the world's medical devices and supporting thousands of U.S. suppliers and an increasing number of U.S. jobs. The demand for quality health care is increasing globally and particularly in developing and middle-income countries due to population growth, rising life expectancy, increasing rates of chronic diseases, and rising affluence. While USTDA understands the importance of a strong health care sector for economic development and also realizes the importance of the sector in terms of supporting U.S. jobs, it is also a highly fragmented sector that would require substantial resources to properly address needs and challenges faced in emerging markets.



USTDA would like to respond to the request for help from the U.S. medical industry, and therefore, will evaluate a special pilot program in one priority country to examine the areas where USTDA assistance could be most effective. Upon mutual agreement between several U.S. medical technology associations and USTDA's program staff, China has been selected as the country in which USTDA will pilot a health care program for FY 2011. The East Asia team is working to design the pilot program with the input of the U.S. Embassy staff in Beijing, the Department of Health and Human Services, and the U.S. business community. The pilot program is described in further detail in the East Asia and Eurasia FY 2011 Regional Strategic Plan.

## GUIDANCE FOR IMPLEMENTING THE FY 2011 STRATEGIC PLAN

It is imperative to remember that while USTDA is dedicated to adhering to the FY 2011 Strategic Plan, the Agency's mandate/mission requires some flexibility in order to respond to global changes as they occur. Therefore, USTDA will continue to respond to the developing needs of the Administration and the U.S. private sector throughout FY 2011. USTDA's FY 2011 Strategic Plan concentrates on the priority countries and sectors discussed above; however, the Agency will still give consideration to projects in non-priority countries or non-priority sectors when U.S. private sector interests align with foreign policy priorities.

In FY 2010, the Agency did a tremendous job investing over 84% of its obligations in its priority countries and 89% of its obligations in its priority sectors, including investments in environment and water which was a sector of special consideration in FY 2010. The Agency is dedicated to meeting or exceeding these percentages in FY 2011, and in order to achieve this goal each region must target its business development efforts to support the overall FY 2011 Strategic Plan. The program staff will concentrate their business development travel in priority countries, and primary funding consideration will be given to

projects that fall within the three priority sectors and the two sectors of special consideration. Nevertheless, if a U.S. company submits a project for funding consideration that meets all USTDA funding criteria, yet falls outside of the priority sectors and/or is in a country that is not listed as a priority for FY 2011, USTDA can and will consider these projects for funding on a case-by-case basis.

## STRENGTHENING KEY PARTNERSHIPS

USTDA is cognizant of how important it is to maintain strong partnerships with its sister USG agencies, international development organizations, financiers, the U.S. private sector, and other trade promotion organizations/agencies. The Agency depends upon these relationships to facilitate project implementation and to ensure the overall success of its program. USTDA will continue to build these relationships this fiscal year and will look for new ways to expand these partnerships to further the Agency's goal of supporting economic development and generating U.S. exports. Specifically, in FY 2011 the Agency will target key partnerships and cooperative efforts with the following organizations and groups:

**Multilateral Development Banks (MDBs):** The Agency plans to enhance its cooperation with the MDBs in order to optimize U.S. industry's participation in MDB-funded development projects. USTDA, with the help of the U.S. Executive Directors' (ED) Offices located at each MDB, will develop reverse trade missions (RTM) to support some of the MDBs' upcoming project procurements. The MDBs view the RTMs as educational tools for both the project sponsor and the bank staff so that they can learn about pertinent U.S. technologies available for project implementation. Each RTM will be developed in coordination with the appropriate bank staff and the U.S. ED's office to ensure that the RTM does not interfere with ongoing procurements, but will be staged well before any planned procurements are announced.

**U.S. Financial Partners:** The U.S. Export-Import Bank (Ex-Im) and the Overseas Private Investment Cooperation (OPIC) are two of USTDA's closest partners. The Agency realizes that many of its export successes would not be possible without Ex-Im and OPIC providing the implementation financing for many USTDA-funded projects. There is a symbiotic relationship between USTDA and these export finance agencies and USTDA will continue to cultivate these relationships to ensure mutual success. USTDA will continue to send Ex-Im and OPIC priority projects for their funding consideration with the hope of improving the projects' likelihood of receiving U.S. financing for implementation. USTDA will also seek to include both institutions in RTM activities wherever practicable.

**U.S. Technical Agency Partners:** USTDA plans to continue and enhance its cooperation with other USG technical agencies in areas of mutual interest. For example, USTDA will continue to lead the Committee on International Aviation Safety and Security (CIASS) that coordinates USG technical assistance in the areas of aviation safety and security in developing countries. As part of CIASS, USTDA is able to strengthen the impact and effectiveness of U.S. aviation and security assistance through a strategic, government-wide focus on priority projects. The Agency will also strengthen its cooperative programs with the Federal Aviation Administration (FAA) and the Department of Energy including the U.S.-India Aviation Cooperation Program, the U.S.-China Aviation Cooperation Program, and the U.S.-China Energy Cooperation Program.



**Trade Promotion Partners:** USTDA laid the foundation for a strong partnership with the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) in FY 2010, and will continue to maintain this relationship throughout FY 2011. Specifically, USTDA and SBA in conjunction with MBDA plan to implement a pilot cooperative program where SBA and MBDA will help promote and participate in several USTDA-funded RTMs. SBA has targeted several RTMs that would benefit their clients and USTDA is working to solidify their participation in these events.

USTDA will also continue to play a vital role in the interagency Trade Promotion Coordinating Committee (TPCC) in FY 2011. The TPCC has been tasked to serve as the main coordinating committee for the NEI and has established seven working groups to help implement the President's vision for the NEI. USTDA is represented in six of the seven working groups and will continue to provide value-added feedback and assistance to the TPCC as needed throughout the year.

## Human Capital Development

One of the Agency's most valuable resources is its human capital. In FY 2011, the Agency will continue to cultivate and further develop its human capital by investing in additional training to meet the needs of the staff. In previous years, most of the Agency's training courses have focused upon professional skill development. In fact, in FY 2010, the Agency invested a great deal of time and financial resources to improve management capabilities and communication skills across all Agency divisions. The overarching goal of these specific training programs was to help the Agency operate more efficiently through effective management and communication. USTDA has already benefited from the progress the Regional Directors and Operations Managers have made in instituting procedural changes as a result of these training programs, and the Agency will carry this momentum into FY 2011.

In addition to continuing professional development and management courses, the Agency plans to add more job-specific training to its human capital development plan for FY 2011. As a result of the 2010 Federal Employee Viewpoint Survey, USTDA learned that many of the staff members would like to receive more training specific to their job duties. Therefore, the program staff is working on a best practices guide for Country Managers, Project Analysts and regional teams to serve as a daily guide for completing certain program actions. For the operations staff, many of the divisions are working on establishing standard operating procedure manuals to be followed in the case of a staffing gap. Both of these in-house actions should help address the need for more job-specific training and institutionalize best practices for any new staff members joining the team in FY 2011.

In conjunction with the job-specific training activities, the Agency will also employ new and improved project management tools to help the Agency effectively manage ongoing projects. Many of the regional teams have developed project management databases to assist in tracking projects as they move toward completion. In FY 2011, USTDA will continue to dedicate resources and train staff on how best to monitor project progression and successfully oversee USTDA's annual expenditures. By training staff on the best practices for closely monitoring projects and disbursements, the Agency will be able to quickly identify projects that are not moving forward and reprogram those funds toward more promising projects that are ready to proceed.

The 2010 Federal Employee Viewpoint Survey also highlighted the need to establish formal policies and programs that promote a healthy work/life balance and overall wellness. As a result of the survey



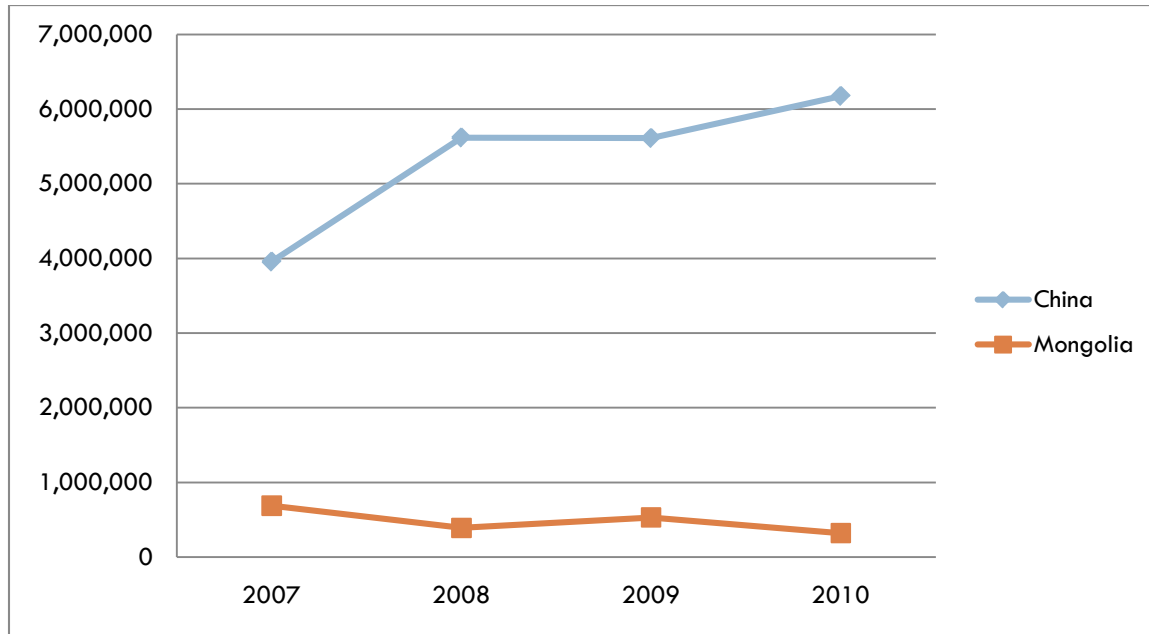
responses, USTDA has put together a series of health and wellness training courses for the Agency's staff for FY 2011. Many staff members have put forward their preferences for wellness training and have specifically requested courses on stress management, maintaining a healthy diet, and exercise programs. The new wellness training programs are scheduled to begin in the fall of 2010 and will continue until the close of the fiscal year.

Finally, USTDA wants to continue to educate its staff on the industry sectors in which the Agency operates. Over the last three years, USTDA has sponsored monthly brown-bag sessions where U.S. industry representatives are invited into the Agency to educate the staff about various U.S. technologies, services, and technical expertise that companies have gained operating in international markets. The USTDA staff has benefited greatly from these industry brown-bag sessions, and the program has allowed the Agency to build strong relationships with these U.S. companies. The Agency plans to continue these industry brown-bag sessions in FY 2011 and will strategically focus the sessions on technologies that fall under the Agency's three priority sectors for FY 2011.

## **Annex 1: Obligations in Priority Countries**

Figures below represent actual obligations in the priority country. They do not include portions of obligations for regional projects that also benefited individual priority countries.

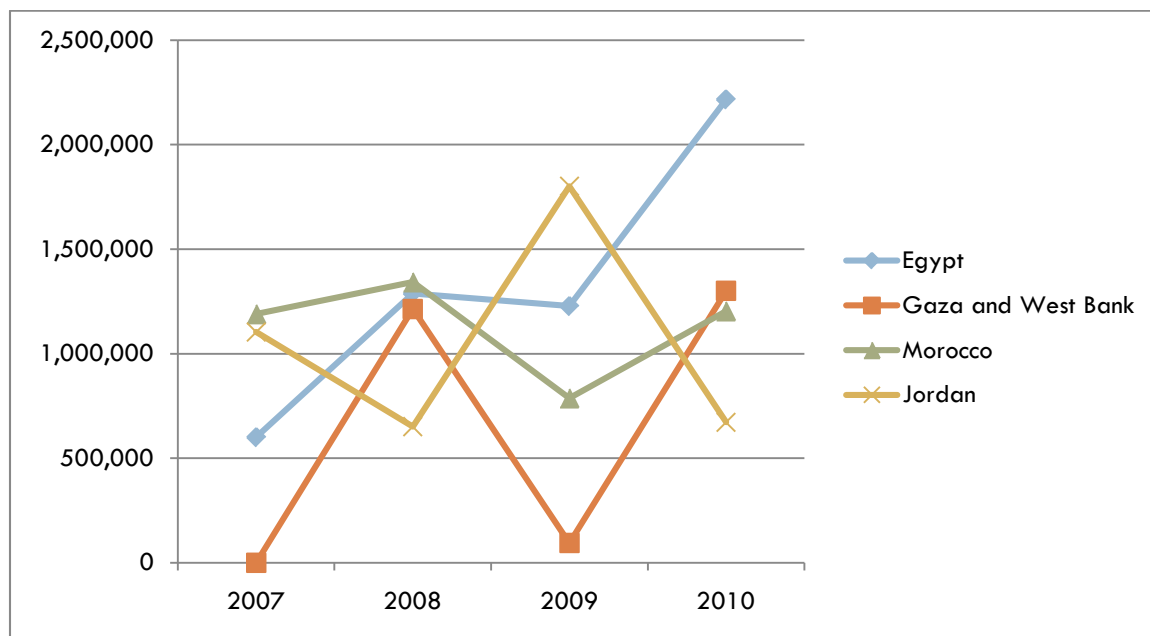
### **East Asia**



	2007	2008	2009	2010
China	\$3,957,714	\$5,618,301	\$5,611,163	\$6,173,932
Mongolia	\$687,433	\$391,549	\$530,580	\$321,589

Portions of obligations for FY 2010 regional projects that benefited Mongolia totaled \$42,711.50.

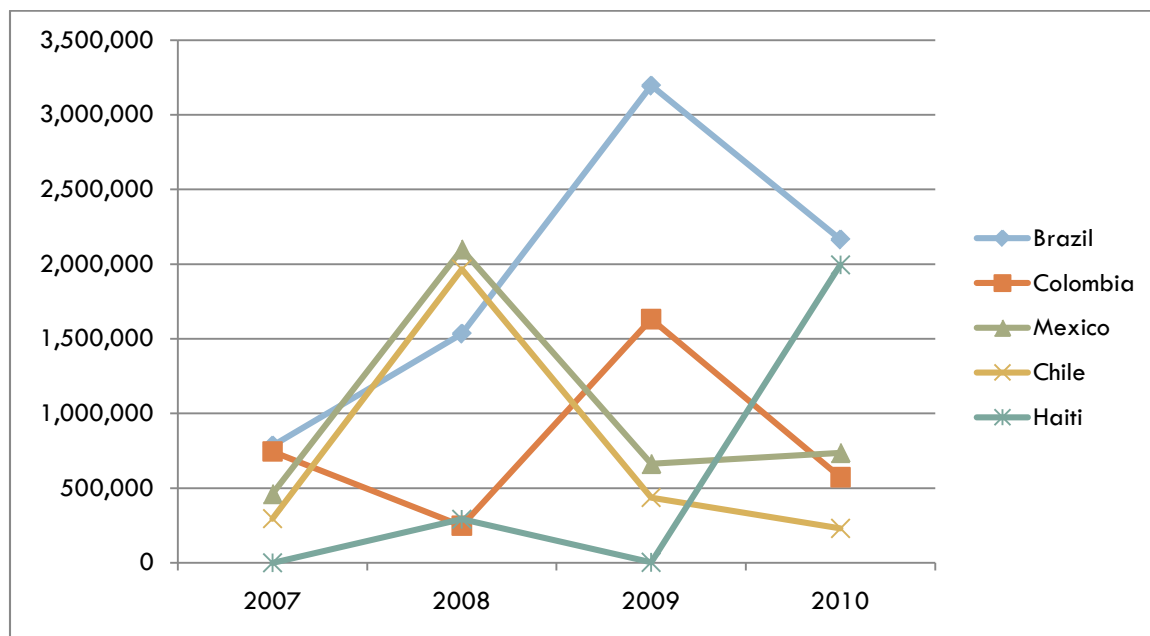
## Middle East and North Africa



	2007	2008	2009	2010
Egypt	\$601,000	\$1,287,925	\$1,227,823	\$2,215,860
Gaza and West Bank	\$0	\$1,214,094	\$94,861	\$1,300,667
Morocco	\$1,190,344	\$1,342,844	\$787,725	\$1,204,058
Jordan	\$1,104,000	\$651,159	\$1,801,404	\$672,204

Portions of obligations for FY 2010 regional projects that benefited MENA priority countries include: Egypt an additional \$88,490; Gaza and West Bank an additional \$5,340; Morocco an additional \$174,022; and Jordan an additional \$145,101.

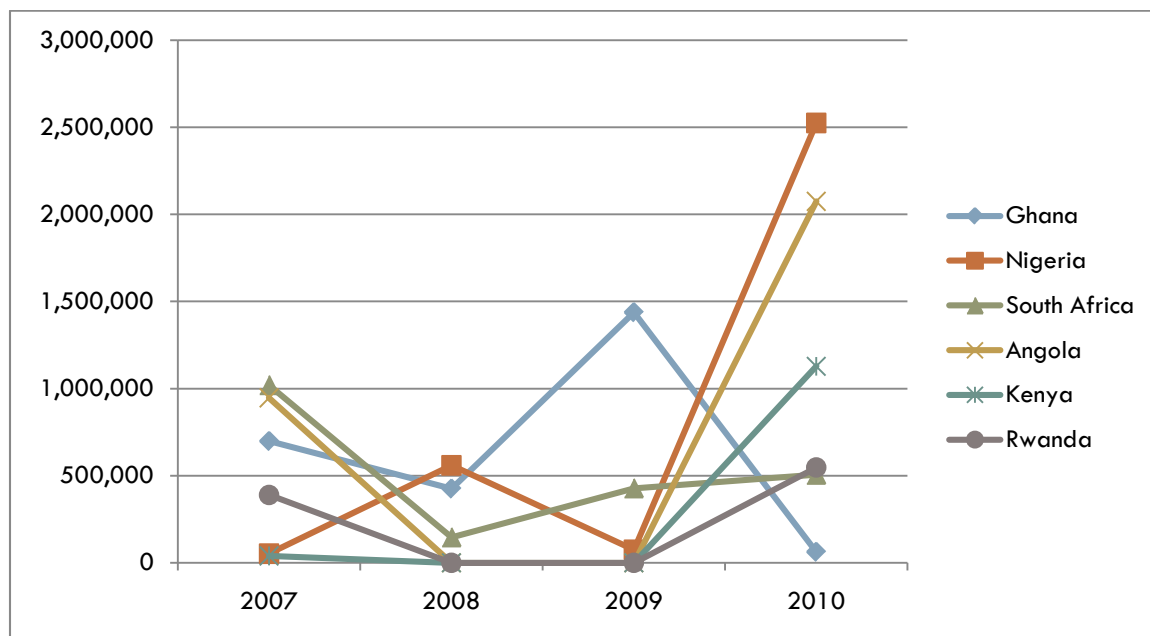
## Latin America and the Caribbean



	2007	2008	2009	2010
Brazil	\$784,242	\$1,533,853	\$3,195,544	\$2,164,811
Colombia	\$745,739	\$248,025	\$1,631,695	\$573,039
Mexico	\$461,406	\$2,099,155	\$663,111	\$736,471
Chile	\$295,141	\$1,965,858	\$437,000	\$230,398
Haiti	\$0	\$292,010	\$3,000	\$1,995,374

Portions of obligations for FY 2010 regional projects that benefited specific LAC priority countries include: Brazil an additional \$45,141; Colombia an additional \$66,782; Mexico and Chile each an additional \$33,058; and Haiti an additional \$63,141.

## Sub-Saharan Africa

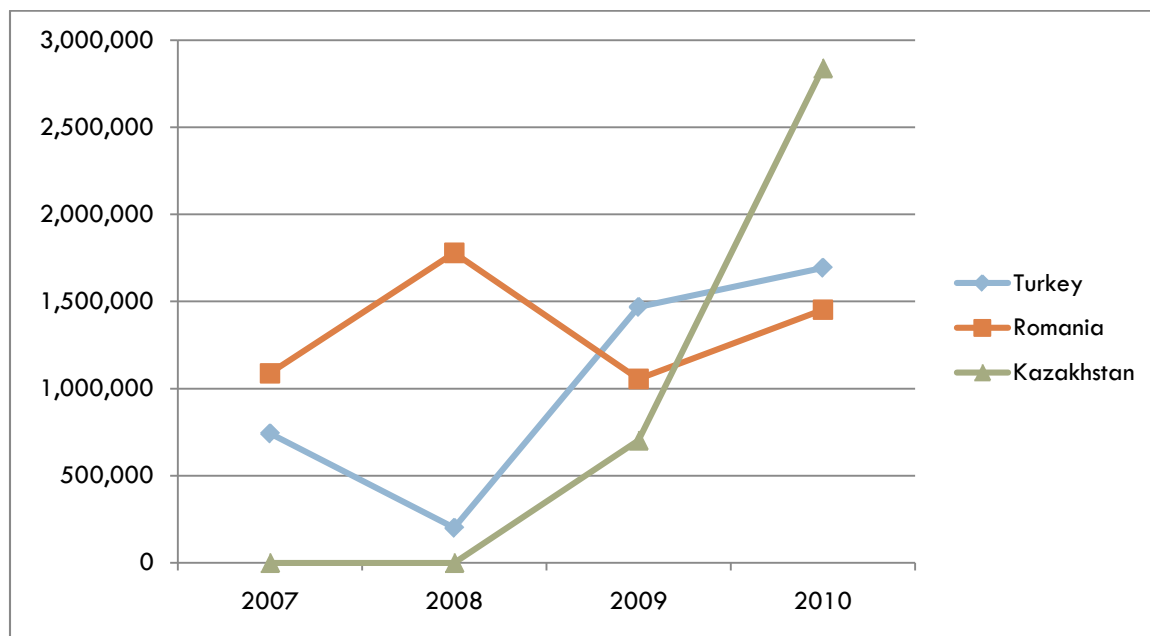


	2007	2008	2009	2010
Ghana	\$698,150	\$424,996	\$1,437,914	\$62,000
Nigeria	\$52,561	\$559,673	\$74,208	\$2,524,713
South Africa	\$1,020,548	\$146,560	\$427,878	\$506,000
Angola	\$947,170	\$0	\$0	\$2,074,805
Kenya	\$39,702	\$0	\$0	\$1,128,146
Rwanda	\$390,000	\$0	\$0	\$547,000

Portions of obligations for FY 2010 regional projects that benefited specific SSA priority countries include: Ghana an additional \$34,253; Nigeria an additional \$115,233; South Africa an additional \$187,679; Angola an additional \$53,987; and Kenya and Rwanda each an additional \$80,185.



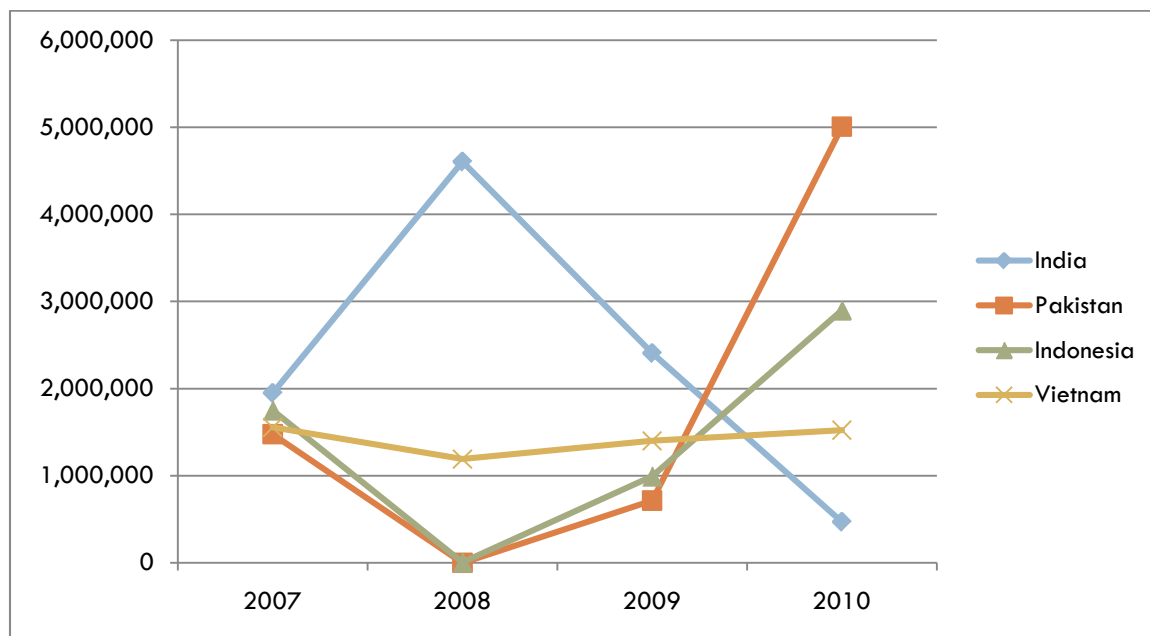
## Europe and Eurasia



	2007	2008	2009	2010
Turkey	\$742,384	\$200,400	\$1,468,458	\$1,693,370
Romania	\$1,087,937	\$1,779,175	\$1,055,055	\$1,452,821
Kazakhstan	\$0	\$0	\$702,112	\$2,838,494

Portions of obligations for FY 2010 regional projects that benefited specific EEA priority countries include: Kazakhstan an additional \$93,317; and Turkey and Romania each an additional \$24,820.

## South and Southeast Asia



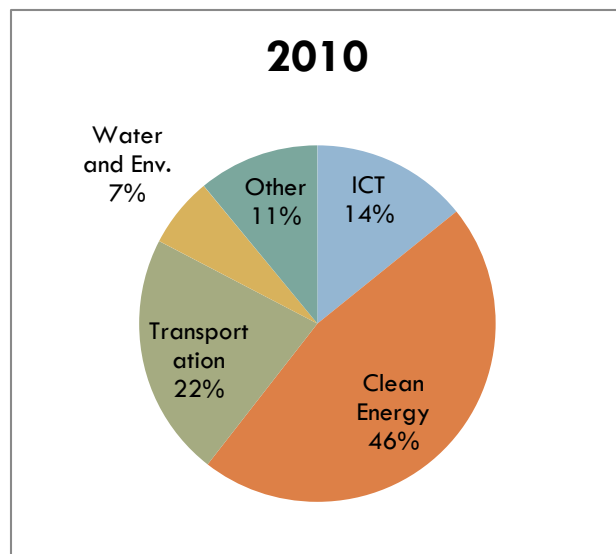
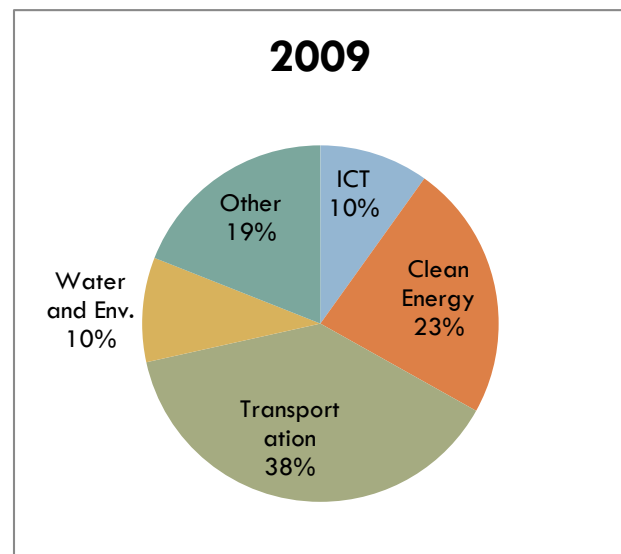
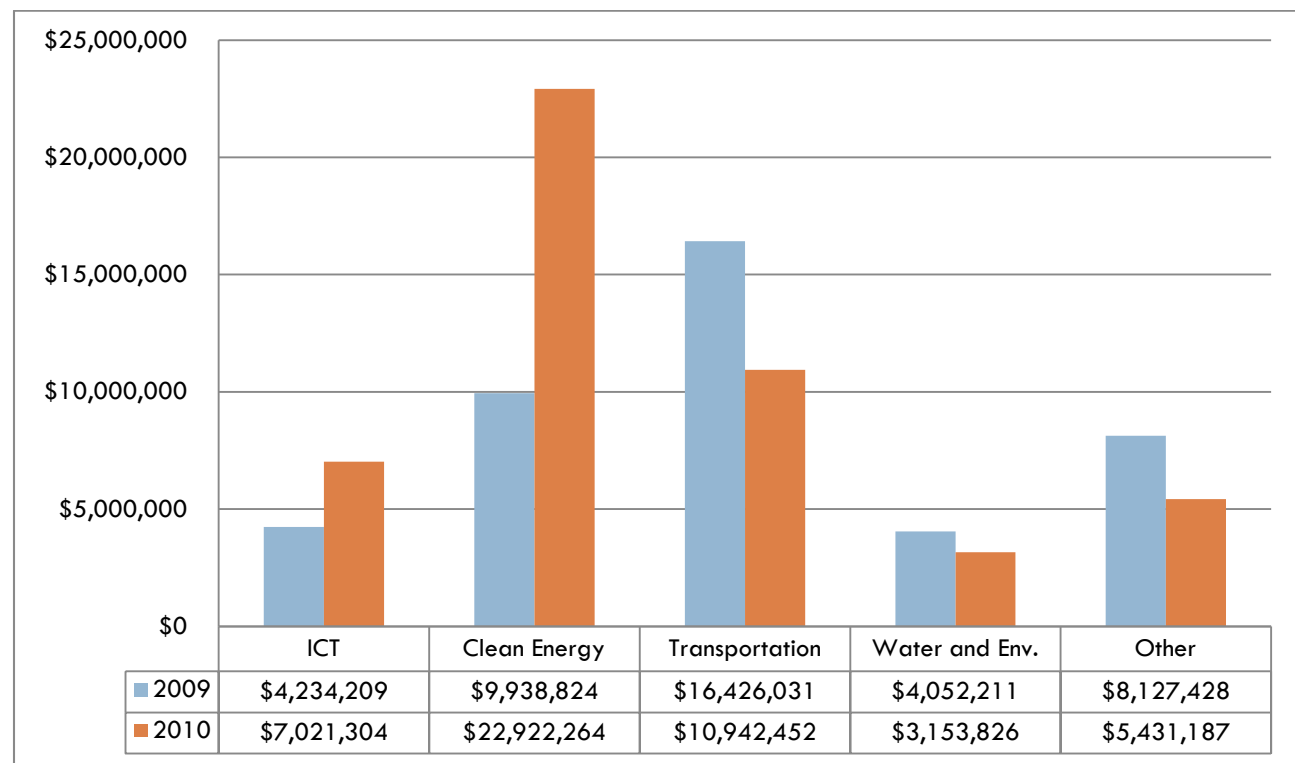
	2007	2008	2009	2010
India	\$1,948,955	\$4,604,989	\$2,406,519	\$469,552
Pakistan	\$1,476,499	\$0	\$715,071	\$5,006,872
Indonesia	\$1,750,488	\$4,950	\$992,518	\$2,898,749
Vietnam	\$1,554,655	\$1,190,467	\$1,399,899	\$1,522,773

Portions of obligations for FY 2010 regional projects that benefited specific priority countries in SSEA include: India, Indonesia, and Vietnam each an additional \$42,711.50.

**Summary of Total Obligations in Priority Countries***By Value of Obligations and Percent of Total Fiscal Year Obligations*

<b>2009</b>		<b>2010</b>	
\$26,663,538	62.3%	\$41,833,158	84.6%

*The FY 2010 figure includes portions of obligations for regional projects that also benefited individual priority countries.*

**Annex 2: Obligations in Priority Sectors and Sectors of Special Consideration**

**Annex 3: Definitions of 'Clean Energy' and 'Energy Efficiency'**

CLEAN ENERGY PROJECT- The term 'clean energy project' means any electricity generation, transmission, storage, heating, cooling, industrial process, or manufacturing project whose primary purpose is the deployment, development, or production of an energy system or technology that avoids, reduces, or sequesters air pollutants or anthropogenic greenhouse gases, including the following:

- (A) Solar.
- (B) Wind.
- (C) Geothermal.
- (D) Biomass/Waste to Energy.
- (E) Hydropower.
- (F) Ocean.
- (G) Fuel cell.
- (H) Advanced battery.
- (I) Carbon capture and sequestration.
- (J) Next generation biofuels.
- (K) Nuclear.

ENERGY EFFICIENCY PROJECT- The term 'energy efficiency project' means any project, technology, function, or measure that results in the reduction of energy use required to achieve the same level of service or output prior to the application of such project, technology, function, or measure, or substantially reduces greenhouse gas emissions relative to emissions that would have occurred prior to the application of such project, technology, function, or measure. Examples of projects that would qualify are:

- (A) Smart grid.
- (B) Smart buildings.
- (C) Smart Transport Systems.
- (D) Other IT systems that significantly reduce greenhouse gas emissions or improve energy efficiency.





## MEMORANDUM

**TO: All Staff**

**FROM: Thomas Hardy**

**RE: FY 2005 Foreign Operations Appropriations –  
Foreign Assistance Restrictions and Notification Requirements**

---

The U.S. Trade and Development Agency (USTDA) is governed primarily by the Foreign Assistance Act of 1961 (FAA) and the annual Foreign Operations appropriation act. These designate how the agency's funds are to be used. Please take note of the following general items and restrictions that are stated within the FAA and the fiscal year (FY) 2005 Appropriations Act.

### **Funds Appropriated to USTDA (Title I):**

-USTDA has been appropriated \$51,500,000 to remain available until September 30, 2006. From this amount, an across the board rescion of 0.8% was enacted making our effective appropriation for FY05 **\$51,088,000**.

### **Assistance for Eastern Europe and the Baltic States**

\$396,600,000 is available until September 30, 2006 for Eastern Europe and the Baltic States under the Support for East European Democracy (SEED) Act of 1989. The President is authorized to withhold funds for economic revitalization programs in Bosnia and Herzegovina.

### **Assistance for the Independent States of the Former Soviet Union**

\$560,000,000 is available until September 30, 2006, for assistance for the Independent States of the former Soviet Union and for related programs under the FREEDOM Support Act.

Notwithstanding any other provision of law, funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, that are made available pursuant to the provisions of section 807 of Public Law 102-511 shall be subject to a 6 percent ceiling on administrative expenses.

Of the funds appropriated under this heading that are allocated for assistance for the Government of the Russian Federation, 60% shall be withheld from obligation until the President makes certain determinations regarding Iran and Chechnya.

**Section 907 (restrictions on Azerbaijan) of the FREEDOM Support Act shall not apply to any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421).**

**\*\*\* Funds appropriated under the heading 'Assistance for the Independent States of the Former Soviet Union' for the Russian Federation, Armenia, Georgia, and Ukraine shall be subject to the regular notification procedures of the Committees on Appropriations. (Section 517)**

**\*\*\* Funds made available in this Act for assistance for the Independent States of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961. (Section 517)**

**\*\*\* Of the funds appropriated under "Assistance for the Independent States of the Former Soviet Union", agencies shall give significant weight to contractors and grantees who propose investing a significant amount of their own resources (including volunteer and in-kind contributions. (Section 517)**

**Restrictions on Voluntary Contributions to United Nations Agencies (Sec. 502)**

None of the funds appropriated by this Act may be made available to pay any voluntary contribution of the United States to the United Nations (including the United Nations Development Program) if the United Nations implements or imposes any taxation on any United States persons.

**Representational Funds (Section 505):**

USTDA has funds available not to exceed \$4,000 for representation and entertainment allowances.

**Prohibition on Taxation of United States Assistance (Section 506):**

Foreign assistance may not be provided to a foreign country unless the agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government.

**Country Prohibitions (Section 507):**

Foreign assistance may not be provided to **Cuba, Libya, North Korea, Iran, and Syria.**

**Military Coups (Section 508):**

Foreign assistance may not be provided to the government of any country whose duly elected head of government is deposed by decree or military coup.

**Limitation on Assistance to Countries in Default – (Section 512) and 620(q) in the FAA:**

Foreign assistance may not be provided to countries that are in default during a period in excess of one calendar year (Appropriations Requirement) or six calendar months (FAA requirement) in the payment of principal and interest to the United States unless the President certifies to the

Committees on Appropriation that assistance to such country is in the national interest of the United States.

**Commerce and Trade (Impact on U.S. Producers – Section 513):**

Foreign assistance may not be provided for direct assistance to establish or expand production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity. **Please note that special attention should be paid to agricultural projects if funded with transfer funds. (Bumpers Amendment)**

None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States.

**Export Financing Transfer Authorities (Section 519):**

Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 2005, for programs under title I of this Act may be transferred between such appropriations for use for any of the purposes, programs, and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer. The exercise of such authority is subject to Congressional notification.

**Congressional Notification (Section 520):**

Foreign assistance may not be provided to the following countries without prior (15 day) notification to the Congress: **Liberia, Serbia, Sudan, Zimbabwe, Pakistan, or Cambodia.**

**Please note that the Democratic Republic of the Congo has been removed from this list.**

Transfer funds for the **Russian Federation, Armenia, Georgia and Ukraine**, and possibly other countries under other transfers, also require notification. (Section 517)

- **Definition of 15-day notification:** Day one of the 15-day notification timeframe begins the day after the Congressional Notification has been delivered to Capitol Hill. Obligations may occur the day after the 15-day notification has expired.

**Prohibition on Bilateral Assistance to Terrorist Countries (Section 527):**

Foreign assistance may not be provided to any terrorist countries. At this point it is unknown what countries fall within this designation, as this will need to be determined by the U.S. Department of State. As such, please consult the Office of General Counsel for information on countries within this designation.

**Impact on Jobs in the United States (Relocation/Workers Rights – Section 533):**

Foreign assistance may not be provided: (a) to induce a U.S. business to relocate outside the U.S. if this will reduce the number of employees of the business enterprise in the U.S. or, (b) for any activity that contributes to the violation of internationally recognized workers rights.

**Reservation of Funds (Sec. 537)**

Funds appropriated by this Act which are earmarked may be reprogrammed for other programs within the same account notwithstanding the earmark if compliance with the earmark is made impossible by operation of any provision of this or any other Act. *Provided*, That any such reprogramming shall be subject to the regular notification procedures of the Committees on Appropriations.

**Nongovernmental Organizations – (Section 541):**

Foreign assistance may not be provided to a nongovernmental organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

**Prohibition on Assistance to Foreign Governments that Export Lethal Military Equipment to Countries Supporting International Terrorism (Section 542):**

Foreign assistance may not be provided to any foreign government, which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government. This prohibition will terminate 12 months after that government ceases to provide such military equipment.

**Please consult with the Office of General Counsel for a list of these countries.**

**Limitation on Assistance for the PLO for the West Bank and Gaza (Section 544):**

None of the funds appropriated by this Act may be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104-107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect.

**Restrictions Concerning the Palestinian Authority (Section 547)**

No funds may be used to establish a USG office in Jerusalem for conducting official business with the Palestinian Authority. Further, official USG meetings with the Palestinian Authority or successor should take place in a location other than Jerusalem.

### **Prohibition of Payment of Certain Expenses (Section 548):**

**None of the funds appropriated or otherwise made available by this Act under the heading 'International Military Education and Training' or 'Foreign Military Financing Program' for Informational Program activities or under the headings 'Child Survival and Health Programs Fund', 'Development Assistance', and 'Economic Support Fund' may be obligated or expended to pay for: (1) alcoholic beverages; or (2) entertainment expenses for activities that are substantially of a recreational character,** including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

**Please take special care when using ESF funds for Orientation Visits, Conferences or other activities where alcohol or recreational activities may be part of the larger program.**

### **Limitation on Assistance to the Palestinian Authority (Section 550):**

None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II (Economic Support Funds) of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority.

WAIVER- The prohibition shall not apply if the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that waiving such prohibition is important to the national security interests of the United States.

### **Limitation on Assistance to Security Forces (Section 551):**

Foreign assistance may not be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights. The U.S. Department of State would need to inform the agency of the countries that lie within this provision.

### **Cambodia (Section 554):**

None of the funds appropriated by this Act may be made available for assistance for the Central Government of Cambodia.

### **Palestinian Statehood (Section 555):**

LIMITATION ON ASSISTANCE- None of the funds appropriated by this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that--

(1) a new leadership of a Palestinian governing entity has been democratically elected through credible and competitive elections;

(2) the elected governing entity of a new Palestinian state--

(A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;

(B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures;  
(C) is establishing a new Palestinian security entity that is cooperative with appropriate Israeli and other appropriate security organizations; and

(3) the Palestinian Authority (or the governing body of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships

#### **Prohibition on Assistance to the Palestinian Broadcasting Corporation (Section 558):**

None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

#### **West Bank and Gaza Program (Section 559):**

OVERSIGHT- For fiscal year 2005, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the appropriate committees of Congress that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading 'Economic Support Fund' for the West Bank and Gaza.

VETTING- Prior to the obligation of funds appropriated by this Act under the heading 'Economic Support Fund' for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity.

#### **War Criminals (Section 561)**

No funds made available by this Act may be made available for any country, entity or municipality that has failed, as determined by the Secretary of State, to apprehend persons indicated by the International Criminal Tribunal for Yugoslavia.

#### **Funding for Serbia (Section 563):**

Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2005, if the President has made the determination and certification contained in subsection (c).

(c) The determination and certification referred to in subsection (a) is a determination by the President and a certification to the Committees on Appropriations that the Government of Serbia and Montenegro is--

(1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, and the surrender and

transfer of indictees or assistance in their apprehension, including making all practicable efforts to apprehend and transfer Ratko Mladic;

(2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.

(d) This section shall not apply to Montenegro, Kosovo, humanitarian assistance or assistance to promote democracy.

#### **SUDAN (Section 569):**

None of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.

#### **Trade Capacity Building (Section 570):**

Of the funds appropriated by this Act, under the headings `Trade and Development Agency', `Development Assistance', `Transition Initiatives', `**Economic Support Fund**', `International Affairs Technical Assistance', and `International Organizations and Programs', not less than \$507,000,000 should be made available for trade capacity building assistance: *Provided*, That \$20,000,000 of the funds appropriated in this Act under the heading `Economic Support Fund' shall be made available for labor and environmental capacity building activities relating to the free trade agreement with the countries of Central America and the Dominican Republic.

#### **Prohibition Against Direct Funding for Saudi Arabia (Section 575)**

None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance any assistance to Saudi Arabia: *Provided*, That the President may waive the prohibition of this section if he certifies to the Committees on Appropriations, 15 days prior to the obligation of funds for assistance for Saudi Arabia, that Saudi Arabia is cooperating with efforts to combat international terrorism and that the proposed assistance will help facilitate that effort.

#### **Uzbekistan (Section 577):**

Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress in meeting its commitments under the `Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America', including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media.



### **Central Asia (Section 578):**

Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights during the preceding 6 month period.

### **Discrimination Against Minority Religious Faiths in the Russian Federation (Section 583):**

None of the funds appropriated under this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.

**\*\*\* USTDA will be closed for work with the Government of the Russian Federation after 180 days from December 8<sup>th</sup>, 2004 unless the President certifies Russia has not enacted any of the above provisions. \*\*\***

### **Compliance with the Algiers Agreements (Section 592)**

None of the funds appropriated by this Act may be made available for assistance for the central Governments of Ethiopia or Eritrea unless the Secretary of State certifies and reports to the Committees on Appropriations that such government is taking steps to comply with the terms of the Algiers Agreements. Certain exceptions may apply.

### **Prohibition on Police Training (Section 660 of Foreign Assistance Act):**

Except under limited circumstances, no assistance may be provided for foreign police, prisons, law enforcement or intelligence services.

### **Transfers:**

Please note that funding which is received from other agencies often carry legislative restrictions (Support for Eastern Europe Democracy Act {SEED}, Freedom Support Act {FSA}, Economic Support Fund {ESF}, etc.). Please consult the Office of General Counsel on matters related to transfer fund restrictions.



## MEMORANDUM

**TO:** All Staff

**FROM:** Thomas Hardy and Jenny Wolff

**RE:** FY 2006 Foreign Operations Appropriations –  
Foreign Assistance Restrictions and Notification Requirements

---

The U.S. Trade and Development Agency (USTDA) is governed primarily by the Foreign Assistance Act of 1961 (FAA) and the annual Foreign Operations appropriation act. These designate how the agency's funds are to be used. Please take note of the following general items and restrictions that are stated within the FAA and the fiscal year (FY) 2006 Appropriations Act.

### **Funds Appropriated to USTDA (Title I):**

-USTDA has been appropriated \$50,900,000 to remain available until September 30, 2007. From this amount, an across the board rescission of 1% was enacted making our effective appropriation for FY06 **\$50,391,000**.

### **Assistance for the Independent States of the Former Soviet Union**

\$514,000,000 is available until September 30, 2007, for assistance for the Independent States of the former Soviet Union and for related programs under the FREEDOM Support Act.

Notwithstanding any other provision of law, funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, that are made available pursuant to the provisions of section 807 of Public Law 102-511 shall be subject to a 6 percent ceiling on administrative expenses.

Of the funds appropriated under this heading that are allocated for assistance for the Government of the Russian Federation, 60% shall be withheld from obligation until the President makes certain determinations regarding Iran and Chechnya.

**Section 907 (restrictions on Azerbaijan) of the FREEDOM Support Act shall not apply to any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421).**

**None of the funds appropriated under the heading 'Assistance for the Independent States of the Former Soviet Union' shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union. (Section 517)**

**\*\*\* Funds appropriated under the heading 'Assistance for the Independent States of the Former Soviet Union' for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan shall be subject to the regular notification procedures of the Committees on Appropriations. (Section 517)**

**\*\*\* Funds made available in this Act for assistance for the Independent States of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961. (Section 517)**

**\*\*\* Of the funds appropriated under "Assistance for the Independent States of the Former Soviet Union", agencies shall give significant weight to contractors and grantees who propose investing a significant amount of their own resources (including volunteer and in-kind contributions. (Section 517)**

**Unobligated Balances Report (Section 504):**

All Departments and Agencies must provide a quarterly report to the Committees on Appropriations that reports accounting by program, project, and activity of the funds received in a fiscal year or any previous fiscal year that are unobligated or unexpended. (USTDA Finance office will provide this report to the Hill.)

**Representational Funds (Section 505):**

USTDA has funds available not to exceed \$4,000 for representation and entertainment allowances.

**Prohibition on Taxation of United States Assistance (Section 506):**

Foreign assistance may not be provided to a foreign country unless the agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government.

**Country Prohibitions (Section 507):**

Foreign assistance may not be provided to **Cuba, Libya, North Korea, Iran, and Syria.**

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Foreign assistance may not be provided to the government of any country whose duly elected head of government is deposed by decree or military coup. (Please consult with the Department of State.)

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Foreign assistance may not be provided to countries that are in default during a period in excess of one calendar year (Appropriations Requirement) or six calendar months (FAA requirement) in the payment of principal and interest to the United States unless the President certifies to the

Committees on Appropriation that assistance to such country is in the national interest of the United States. (Please consult with the Deputy Director, the Chief of Staff, or the Director of Policy and Program.)

### **Commerce and Trade (Impact on U.S. Producers – Section 513):**

Foreign assistance may not be provided for direct assistance to establish or expand production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity. **Please note that special attention should be paid to agricultural projects if funded with transfer funds.**

None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States.

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**Reservation of Funds (Sec. 537):**

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**Nongovernmental Organizations – (Section 541):**

Foreign assistance may not be provided to a nongovernmental organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

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**Limitation on Assistance for the PLO for the West Bank and Gaza (Section 544):**

None of the funds appropriated by this Act may be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104-107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect. (The President has not exercised this authority to date.)

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**Prohibition of Payment of Certain Expenses (Section 548):**

**None of the funds appropriated or otherwise made available by this Act under the heading 'International Military Education and Training' or 'Foreign Military Financing Program' for Informational Program activities or under the headings 'Child Survival and Health Programs Fund', 'Development Assistance', and 'Economic Support Fund' may be obligated or expended to pay for: (1) alcoholic beverages; or (2) entertainment expenses for activities**

**that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.**

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WAIVER- The prohibition shall not apply if the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that waiving such prohibition is important to the national security interests of the United States. (The President has not exercised this authority to date.)

**Limitation on Assistance to Security Forces (Section 551):**

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None of the funds appropriated by this Act may be made available for assistance for the Central Government of Cambodia.

**Palestinian Statehood (Section 555):**

LIMITATION ON ASSISTANCE- None of the funds appropriated by this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that (The Secretary of State has not exercised this authority to date.)--

(1) a new leadership of a Palestinian governing entity has been democratically elected through credible and competitive elections;

(2) the elected governing entity of a new Palestinian state--

(A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;

(B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures;

(C) is establishing a new Palestinian security entity that is cooperative with appropriate Israeli and other appropriate security organizations; and

(3) the Palestinian Authority (or the governing body of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships.

**Prohibition on Assistance to the Palestinian Broadcasting Corporation (Section 558):**

None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

**West Bank and Gaza Program (Section 559):**

OVERSIGHT- For fiscal year 2006, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the appropriate committees of Congress that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading 'Economic Support Fund' for the West Bank and Gaza.

VETTING- Prior to the obligation of funds appropriated by this Act under the heading 'Economic Support Fund' for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity.

**War Criminals (Section 561):**

No funds made available by this Act may be made available for any country, entity or municipality that has failed, as determined by the Secretary of State, to apprehend persons indicated by the International Criminal Tribunal for Yugoslavia.

**Funding for Serbia (Section 563):**

Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2006, if the President has made the determination and certification contained in subsection (c).

(c) The determination and certification referred to in subsection (a) is a determination by the President and a certification to the Committees on Appropriations that the Government of Serbia and Montenegro is--

- (1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension, including making all practicable efforts to apprehend and transfer Ratko Mladic;
- (2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and



(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.

(d) This section shall not apply to Montenegro, Kosovo, humanitarian assistance or assistance to promote democracy.

**SUDAN (Section 569):**

None of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.

**Trade Capacity Building (Section 570):**

Of the funds appropriated by this Act, under the headings '**Trade and Development Agency**', '**Development Assistance**', '**Transition Initiatives**', '**Economic Support Fund**', '**International Affairs Technical Assistance**', and '**International Organizations and Programs**', not less than \$522,000,000 should be made available for trade capacity building assistance: *Provided*, That \$20,000,000 of the funds appropriated in this Act under the heading '**Economic Support Fund**' shall be made available for labor and environmental capacity building activities relating to the free trade agreement with the countries of Central America and the Dominican Republic.

**Limitation on Economic Support Fund Assistance for Certain Foreign Governments that are Parties to the International Criminal Court (Section 574):**

None of the funds made available in this Act in the title II under the heading '**Economic Support Fund**' may be used to provide assistance to the government of a country that is party to the International Criminal Court and has not entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such a country.

**Limitation on Funds Relating to Attendance of Federal Employees at Conferences Occurring Outside the United States (Section 580):**

None of the funds made available in this Act may be used to send or otherwise pay for the attendance of more than 50 employees of agencies or departments of the United States government who are stationed in the United States, at any single international conference occurring outside the United States, unless the Secretary of State determines that such attendance is in the national interest.

**Prohibition Against Direct Funding for Saudi Arabia (Section 582):**

None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance any assistance to Saudi Arabia: *Provided*, That the President may waive the prohibition of this section if he certifies to the Committees on Appropriations, 15 days prior to the obligation of funds for assistance for Saudi Arabia, that Saudi Arabia is cooperating with efforts to combat international terrorism and that the proposed assistance will help facilitate that effort.

### **Uzbekistan (Section 586):**

Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress in meeting its commitments under the 'Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America', including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media, and that a credible international investigation of the May 31, 2005, shootings in Andijan is underway with the support of the Government of Uzbekistan.

### **Central Asia (Section 587):**

Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights during the preceding 6 month period.

**\*\*** Prior to the initial obligation of assistance for the Government of Kyrgyzstan, the Secretary of State shall submit a report to the Committees on Appropriations describing: (1) whether the Government of Kyrgyzstan is forcibly returning Uzbeks who have fled violence and political persecution, in violation of the 1951 Geneva Convention relating to the status of refugees, and the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment; (2) efforts made by the United States to prevent such returns; and (3) the response of the Government of Kyrgyzstan.

### **Discrimination Against Minority Religious Faiths in the Russian Federation (Section 589):**

None of the funds appropriated under this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party. (The President has not exercised this authority to date.)

**\*\*\* USTDA will be closed for work with the Government of the Russian Federation after 180 days from November 14, 2005 unless the President certifies Russia has not enacted any of the above provisions. \*\*\***

### **War Crimes in Africa (Section 590):**

The Congress reaffirms its support for the efforts of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) to bring justice individuals responsible for war crimes and crimes against humanity in a timely manner.

**\*\*Funds appropriated by this Act, including funds for debt restructuring, may be made available for assistance to the central government of a country in which individuals indicated by ICTR and SCSL are credibly alleged to be living, if the Secretary of State determines and reports to the Committees on Appropriations that such government is cooperating with ICTR and SCSL, including the surrender and transfer of indictees in a timely manner: Provided, That this subsection shall not apply to assistance provided under section 551 of the Foreign Assistance Act of 1961 or to project assistance under title II of this Act: Provided further, That the United States shall use its voice and vote in the United Nations Security Council to fully support efforts by ICTR and SCSL to bring to justice individuals indicted by such tribunals in a timely manner.**

**\*\*Notwithstanding subsections (b) and (c), assistance may be made available for the central Government of Nigeria after 120 days following enactment of this Act only if the President submits a report to the Committees on Appropriations, in classified form if necessary, on (1) the steps taken in fiscal years 2003, 2004, and 2005 to obtain the cooperation of the Government of Nigeria in surrendering Charles Taylor to the SCSL; and (2) a strategy, including a timeline, for bringing Charles Taylor before the SCSL.**

**Prohibition on Police Training (*Section 660 of Foreign Assistance Act*):**

Except under limited circumstances, no assistance may be provided for foreign police, prisons, law enforcement or intelligence services.

**Transfers:**

Please note that funding which is received from other agencies often carry legislative restrictions (Support for Eastern Europe Democracy Act {SEED}, Freedom Support Act {FSA}, Economic Support Fund {ESF}, etc.). Please consult the Office of General Counsel on matters related to transfer fund restrictions.



## **I. Introduction**

The U.S. Trade and Development Agency (USTDA) is a foreign assistance agency created pursuant to section 661 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. § 2421). The complete text of the statute is reprinted below in Section II of this memorandum.

USTDA is governed primarily by the Foreign Assistance Act of 1961 (FAA) and the annual Foreign Operations, Export Financing, and Related Programs Appropriation Act (FY Act). These laws designate the Agency's funding and how the appropriated funds are to be used. The restrictions and requirements that are stated within the FAA and the FY 2006 Act, as amended by the Continuing Appropriations Resolution, 2007 (Public Law 110-5) are outlined in Section III of this memorandum.

USTDA operated under Continuing Resolution throughout FY 2007, and Congress has now passed a new CR to fund the Agency's operations into FY 2008, which began on October 1, 2007. Under these Continuing Resolutions, the FY 2006 Act provisions remain essentially intact, with minor modifications described in Section IV below.

Section V briefly discusses some of the statutory issues that have recently arisen at USTDA.

Section VI contains a table listing the various agreements USTDA has entered with other government agencies for the transfer of funds to and from USTDA.

## **II. USTDA Statutory Authority**

Section 661 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. § 2421):

### *(a) Purpose*

*The Trade and Development Agency shall be an agency of the United States under the foreign policy guidance of the Secretary of State. The purpose of the Trade and Development Agency is to promote United States private sector participation in development projects in developing and middle-income countries, with special emphasis on economic sectors with significant United States export potential, such as energy, transportation, telecommunications, and environment.*

### *(b) Authority to provide assistance*

#### *(1) Authority*

*The Director of the Trade and Development Agency is authorized to work with foreign countries, including those in which the United States development programs have been concluded or those not receiving assistance under subchapter I of this chapter,<sup>1</sup> to carry out the purpose of this section by providing funds for feasibility studies, architectural and engineering*

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<sup>1</sup> The ability to operate in countries closed to other foreign assistance agencies is a unique and valuable aspect of USTDA's charter, and the basis for our program in the People's Republic of China.

*design, and other activities related to development projects which provide opportunities for the use of United States exports.*

*(2) Use of funds*

*Funds under this section may be used to provide support for feasibility studies for the planning, development, and management of, and procurement for, bilateral and multilateral development projects, including training activities undertaken in connection with a project, for the purpose of promoting the use of United States goods and services in such projects. Funds under this section may also be used for architectural and engineering design, including -*

*(A) concept design, which establishes the basic technical and operational criteria for a project, such as architectural drawings for a proposed facility, evaluation of site constraints, procurement requirements, and equipment specifications; and*

*(B) detail design, which sets forth specific dimensions and criteria for structural, mechanical, electrical, and architectural operations, and identifies other resources required for project operations.*

*(3) Information dissemination*

*(A) The Trade and Development Agency shall disseminate information about its project activities to the private sector.*

*(B) Other agencies of the United States Government shall cooperate with the Trade and Development Agency in order for the Agency to provide more effectively informational services to persons in the private sector concerning trade development and export promotion related to development projects.*

*(4) Nonapplicability of other provisions*

*Any funds used for purposes of this section may be used notwithstanding any other provision of law.<sup>2</sup>*

*(5) Contributions to costs*

*The Trade and Development Agency shall, to the maximum extent practicable, require corporations and other entities to -*

*(A) share the costs<sup>3</sup> of feasibility studies and other project planning services funded under this section; and*

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<sup>2</sup> USTDA's "notwithstanding" authority is broader than that of most other agencies, and is used on a very limited basis and only with the specific advance approval of the Director.

<sup>3</sup> This provision is the basis of USTDA's cost share program, which is generally used for certain contracts with U.S. companies approved without competition. Further details of the cost share program are set forth in the "Frequently Asked Questions" (FAQ) on the Agency's website.

*(B) reimburse the Trade and Development Agency those funds provided under this section, if the corporation or entity concerned succeeds in project implementation.<sup>4</sup>*

*(c) Director and personnel*

*(1) Director*

*There shall be at the head of the Trade and Development Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.*

*(2) Officers and employees*

*(A) The Director may appoint such officers and employees of the Trade and Development Agency as the Director considers appropriate.*

*(B) The officers and employees appointed under this paragraph shall have such functions as the Director may determine.*

*(C) Of the officers and employees appointed under this paragraph, 2 may be appointed without regard to the provisions of title 5, governing appointments in the competitive service, and may be compensated without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title.*

*(D) Under such regulations as the President may prescribe, any individual appointed under subparagraph (C) may be entitled, upon removal (except for cause) from the position to which the appointment was made, to reinstatement to the position occupied by that individual at the time of appointment or to a position of comparable grade and pay.*

*(d) Annual report*

*The President shall, not later than December 31 of each year, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the activities of the Trade and Development Agency in the preceding fiscal year.*

*(e) Audits*

*(1) In general*

*The Trade and Development Agency shall be subject to the provisions of chapter 35 of title 31, except as otherwise provided in this section.*

*(2) Independent audit*

*An independent certified public accountant shall perform a financial and compliance audit of the financial statements of the Trade and Development Agency each year, in accordance with*

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<sup>4</sup> This provision is the basis of USTDA's success fee program, also described further in the FAQ.

*generally accepted Government auditing standards for a financial and compliance audit, taking into consideration any standards recommended by the Comptroller General. The independent certified public accountant shall report the results of such audit to the Director of the Trade and Development Agency. The financial statements of the Trade and Development Agency shall be presented in accordance with generally accepted accounting principles. These financial statements and the report of the accountant shall be included in a report which contains, to the extent applicable, the information identified in section 3512 of title 31, and which the Trade and Development Agency shall submit to the Congress not later than 6 1/2 months after the end of the last fiscal year covered by the audit. The Comptroller General may review the audit conducted by the accountant and the report to the Congress in the manner and at such times as the Comptroller General considers necessary.*

*(3) Audit by Comptroller General*

*In lieu of the financial and compliance audit required by paragraph (2), the Comptroller General shall, if the Comptroller General considers it necessary or upon the request of the Congress, audit the financial statements of the Trade and Development Agency in the manner provided in paragraph (2).*

*(4) Availability of information*

*All books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Trade and Development Agency and the accountant who conducts the audit under paragraph (2), which are necessary for purposes of this subsection, shall be made available to the representatives of the Government Accountability Office designated by the Comptroller General.*

*(f) Funding*

*(1) Authorization*

*(A) There are authorized to be appropriated for purposes of this section, in addition to funds otherwise available for such purposes, \$48,000,000 for fiscal year 2000 and such sums as may be necessary for each fiscal year thereafter.*

*(B) Amounts appropriated pursuant to the authorization of appropriations under subparagraph (A) are authorized to remain available until expended.*

*(2) Funding for technical assistance grants by multilateral development banks*

*(A) The Trade and Development Agency should, in carrying out its program, provide, as appropriate, funds to multilateral development banks for technical assistance grants.*

*(B) As used in subparagraph (A) -*

*(i) the term "technical assistance grants" means funding by multilateral development banks of services from the United States in connection with projects and programs supported by such banks, including, but not limited to, engineering, design, and consulting services; and*



(ii) the term "multilateral development bank" has the meaning given that term in section 262r(c) of this title.

### **III. Relevant Restrictions and Notification Requirements**

As noted, all sections of the FY 2006 Act regarding USTDA are still applicable, except as detailed below in Section IV of this memorandum. They set forth a number of restrictions and conditions on the Agency's program activities. In some instances, restrictions are imposed by other laws.

#### Funds Appropriated to USTDA (FY 2006 Act - Title I), as amended by Continuing Appropriations Resolutions, 2007 and 2008):

USTDA has been appropriated \$50,900,000 to remain available until September 30, 2007. From this amount, an across the board rescission of 1% was enacted, making our effective appropriation for FY08 **\$50,391,000**.

#### Assistance to the Independent States of the Former Soviet Union (FY 2006 Act)

Section 907 (restrictions on Azerbaijan) of the FREEDOM Support Act (which provides for assistance to the Independent States of the former Soviet Union) shall not apply to any assistance provided by the Trade and Development Agency.

#### Unobligated Balances Report (FY 2006 Section 504):

All Departments and Agencies must provide a quarterly report to the Committees on Appropriations that reports accounting by program, project, and activity of the funds received in a fiscal year or any previous fiscal year that are unobligated or unexpended. (USTDA Finance office will provide this report to the Hill.)

#### Representational Funds (FY 2006 Section 505):

USTDA has funds available not to exceed \$4,000 for representation and entertainment allowances.

#### Prohibition on Taxation of United States Assistance (FY 2006 Section 506):

Foreign assistance may not be provided to a foreign country unless the agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government.

#### Country Prohibitions (FY 2006 Section 507):

Foreign assistance may not be provided to *Cuba, Libya, North Korea, Iran, and Syria*. Note: This prohibition does not apply to OPIC activities in Libya or direct loans, credits, insurance and guarantees made available by the Export-Import Bank for/in Libya.

#### Military Coups (FY 2006 Section 508):

Foreign assistance may not be provided to the government of any country whose duly elected head of government is deposed by military coup or decree unless the President has notified Congress that a democratically elected government has since taken office. NOTE: This provision affects and effectively suspends USTDA's program in Thailand.

#### Limitation on Assistance to Countries in Default – (FY 2006 Section 512 and FAA Section 620(q)):

Foreign assistance may not be provided to countries that are in default during a period in excess of one calendar year (Appropriations Requirement) or six calendar months (FAA requirement) in the payment of principal and interest to the United States unless the President certifies to the Committees on Appropriation that assistance to such country is in the national interest of the United States.<sup>5</sup>

#### Commerce and Trade - Impact on U.S. Producers (FY 2006 Section 513):

Foreign assistance may not be provided for direct assistance to establish or expand production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the FAA shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States.

#### Notification Requirements (FY 2006 Section 515):

None of the funds made available to USTDA under this Act shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Committees on Appropriations for obligations under any of these specific headings unless the Committees on Appropriations of both Houses of Congress are previously notified 15 days in advance.

#### Independent States of the Former Soviet Union (FY 2006 Section 517)

None of the funds appropriated under the heading 'Assistance for the Independent States of the Former Soviet Union' shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the

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<sup>5</sup> Every month, USTDA receives a list from USAID indicating which countries are currently in default as defined by FY 2006 Section 512 and FAA Section 620(q) and which countries are at risk of potential violations. This report is circulated to USTDA staff and can also be found on USTDA's computers at G:\Legal\Restrictions (Presidential Determination)\Loan Delinquency\620q - Brooke list.

territorial integrity or national sovereignty of any other Independent State of the former Soviet Union.

Funds appropriated under the heading ‘Assistance for the Independent States of the Former Soviet Union’ for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan shall be subject to the regular notification procedures of the Committees on Appropriations.

Funds made available in this Act for assistance for the Independent States of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961.

Of the funds appropriated under ‘Assistance for the Independent States of the Former Soviet Union,’ agencies shall give significant weight to contractors and grantees who propose investing a significant amount of their own resources (including volunteer and in-kind contributions) in such projects and activities.

Export Financing Transfer Authorities (FY 2006 Section 519):

Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 2006, for programs under title I of this Act may be transferred between such appropriations for use for any of the purposes, programs, and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer. The exercise of such authority is subject to Congressional notification.

Congressional Notification (FY 2006 Section 520):

Foreign assistance may not be provided to the following countries without prior (15 day) notification to Congress: *Liberia, Serbia, Sudan, Zimbabwe, Pakistan, or Cambodia.*

Transfer funds for the *Russian Federation, Armenia, Kazakhstan, Uzbekistan* (and possibly other countries under other transfers) also require notification.

*Definition of 15-day notification:* Day one of the 15-day notification period begins the day *after* the Congressional Notification has been delivered to Capitol Hill. Obligations may occur the day *after* the 15-day notification has expired.

Prohibition on Bilateral Assistance to Terrorist Countries (FY 2006 Section 527):

Foreign assistance may not be provided to any country that grants sanctuary from prosecution to any individual or group which has committed an act of terrorism or otherwise supports international terrorism.<sup>6</sup> This prohibition may be waived if the President determines that national security or humanitarian reasons justify such waiver.

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<sup>6</sup> See the Department of State website for details at <http://www.state.gov/s/ct/c14151.htm>

Impact on Jobs in the United States (FY 2006 Section 533):

Foreign assistance may not be provided: (a) to induce a U.S. business to relocate outside the U.S. if this will reduce the number of employees of the business enterprise in the U.S. or (b) for any activity that contributes to the violation of internationally recognized workers' rights.

Special Authorities (FY 2006 Section 534)

Section 534(a): Funds appropriated by this Act for assistance to Afghanistan may be made available notwithstanding section 512 of this Act (Limitation on Assistance to Countries in Default) and FAA section 660 (Prohibition on Police Training).

Section 534(g): In providing assistance under FAA section 660(b) (Exceptions to Prohibitions on Police Training), support for a nation emerging from instability may be deemed to mean support for regional, district, municipal, or other sub-national entity emerging from instability, as well as a nation emerging from instability.

Section 534(j)(2): Funds appropriated by this Act for assistance to Pakistan may be made available notwithstanding section 512 of this Act and FAA section 620(q) (Limitation on Assistance to Countries in Default).

Nongovernmental Organizations – (FY 2006 Section 541):

Foreign assistance may not be provided to a nongovernmental organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

Prohibition on Assistance to Foreign Governments that Export Lethal Military Equipment to Countries Supporting International Terrorism (FY 2006 Section 542):

Foreign assistance may not be provided to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government unless the President determines that furnishing such assistance is important to US national interests. This prohibition will terminate 12 months after that government ceases to provide such military equipment. (Consult with the Department of State.)

Limitation on Assistance for the PLO for the West Bank and Gaza (FY 2006 Section 544):

None of the funds appropriated by this Act may be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104-107) or any other legislation to suspend or make inapplicable section 307 of the FAA and that suspension is still in effect. (The President has not exercised this authority to date.)

Restrictions Concerning the Palestinian Authority (FY 2006 Section 547):

No funds may be used to establish a USG office in Jerusalem for conducting official business with the Palestinian Authority. Further, official USG meetings with the Palestinian Authority or successor should take place in a location other than Jerusalem.

Prohibition of Payment of Certain Expenses (FY 2006 Section 548):

None of the funds appropriated or otherwise made available by this Act under the heading 'International Military Education and Training' or 'Foreign Military Financing Program' for Informational Program activities or under the headings 'Child Survival and Health Programs Fund,' 'Development Assistance,' and 'Economic Support Fund' may be obligated or expended to pay for: (1) alcoholic beverages; or (2) entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.<sup>7</sup>

Limitation on Assistance to the Palestinian Authority (FY 2006 Section 550):

None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II (Economic Support Funds) of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority (PA) without a waiver by the President. Section 1304 (a) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, extended this prohibition to all funds (not just Economic Support Funds) appropriated under the FY 2006 Act and any previous Foreign Operations Appropriations Act, but allowed the Secretary of State to effectively waive such prohibitions upon a determination that the PA has complied with certain standards. (Secretary Rice has issued such a determination, permitting USTDA assistance to the PA.)

Limitation on Assistance to Security Forces (FY 2006 Section 551):

Foreign assistance may not be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights unless the Secretary of State determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice. The U.S. Department of State would need to inform the agency of the countries that lie within this provision.

Palestinian Statehood (FY 2006 Section 555):

None of the funds appropriated by this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that (1) a new leadership of a Palestinian governing entity has been democratically elected through credible and competitive elections; (2) the elected governing entity of a new Palestinian state has demonstrated a firm commitment to peaceful co-existence with the State of Israel, is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza,

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<sup>7</sup> *Special care should be taken when using ESF funds for Orientation Visits, Conferences or other activities where alcohol or recreational activities may be part of the larger program.*

including the dismantling of terrorist infrastructures and is establishing a new Palestinian security entity that is cooperative with appropriate Israeli and other appropriate security organizations; and (3) the Palestinian Authority (or the governing body of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships. (The Secretary of State has not exercised this authority to date.)

Prohibition on Assistance to the Palestinian Broadcasting Corporation (FY 2006 Section 558):

None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

West Bank and Gaza Program (FY 2006 Section 559):

For fiscal year 2006, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the appropriate committees of Congress that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading 'Economic Support Fund' for the West Bank and Gaza.

Prior to the obligation of funds appropriated by this Act under the heading 'Economic Support Fund' for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity.

War Criminals (FY 2006 Section 561):

No funds made available by this Act may be made available for assistance to any country, entity or municipality that has failed, as determined by the Secretary of State, to apprehend persons in their territory indicted by the International Criminal Tribunal for Yugoslavia. This prohibition applies to Bosnia and Herzegovina, Croatia, Serbia, the Federation of Bosnia and Herzegovina, Kosovo, Montenegro, the Republika Srpska, and any city, town, or other subdivision within these countries and entities.

Funding for Serbia (FY 2006 Section 563):

Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2006, if the President has determined and certified to the Committees on Appropriations that the Government of Serbia and Montenegro is (1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension, including making all practicable efforts to apprehend and transfer Ratko Mladic; (2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions;

and (3) taking steps to implement policies which reflect a respect for minority rights and the rule of law. This section does not apply to Montenegro, Kosovo, humanitarian assistance or assistance to promote democracy.

Sudan (FY 2006 Section 569):

None of the funds appropriated by this Act may be made available for assistance for the Government of Sudan. This prohibition does not apply to humanitarian assistance, assistance for Darfur and for areas outside the control of the Government of Sudan, and assistance to support implementation of the Comprehensive Peace Agreement.

Trade Capacity Building (FY 2006 Section 570):

Of the funds appropriated by this Act, under the headings ‘Trade and Development Agency,’ ‘Development Assistance,’ ‘Transition Initiatives,’ ‘Economic Support Fund,’ ‘International Affairs Technical Assistance,’ and ‘International Organizations and Programs,’ not less than \$522,000,000 should be made available for trade capacity building assistance. \$20,000,000 of the funds appropriated in this Act under the heading ‘Economic Support Fund’ shall be made available for labor and environmental capacity building activities relating to the free trade agreement with the countries of Central America and the Dominican Republic.

Limitation on Economic Support Fund Assistance for Certain Foreign Governments that are Parties to the International Criminal Court (FY 2006 Section 574):

None of the funds made available in this Act in the title II under the heading ‘Economic Support Fund’ may be used to provide assistance to the government of a country that is party to the International Criminal Court and has not entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such a country. The President can waive this prohibition with prior notice to Congress for NATO member countries, major non-NATO allies (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand), Taiwan, and other countries if he determines it is important to the national interests of the US to waive such prohibition.

Limitation on Funds Relating to Attendance of Federal Employees at Conferences Occurring Outside the United States (FY 2006 Section 580):

None of the funds made available in this Act may be used to send or otherwise pay for the attendance of more than 50 employees of agencies or departments of the United States government who are stationed in the United States, at any single international conference occurring outside the United States, unless the Secretary of State determines that such attendance is in the national interest.

Prohibition Against Direct Funding for Saudi Arabia (FY 2006 Section 582):

None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance any assistance to Saudi Arabia. The President may waive this prohibition if he certifies to the Committees on Appropriations, 15 days prior to the obligation of



funds for assistance for Saudi Arabia, that Saudi Arabia is cooperating with efforts to combat international terrorism and that the proposed assistance will help facilitate that effort.

Uzbekistan (FY 2006 Section 586):

Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress in meeting its commitments under the 'Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America,' including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media, and that a credible international investigation of the May 31, 2005, shootings in Andijan is underway with the support of the Government of Uzbekistan.

Central Asia (FY 2006 Section 587):

Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights during the preceding 6 month period. This requirement may be waived if the Secretary of State determines and reports to the Committees on Appropriations that such a waiver is important to US national security. Secretary Rice provided such a waiver for FY 2007 funds.<sup>8</sup>

Prior to the initial obligation of assistance for the Government of Kyrgyzstan, the Secretary of State shall submit a report to the Committees on Appropriations describing: (1) whether the Government of Kyrgyzstan is forcibly returning Uzbeks who have fled violence and political persecution, in violation of the 1951 Geneva Convention relating to the status of refugees, and the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment; (2) efforts made by the United States to prevent such returns; and (3) the response of the Government of Kyrgyzstan.

Discrimination Against Minority Religious Faiths in the Russian Federation (FY 2006 Section 589):

None of the funds appropriated under this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.

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<sup>8</sup> A copy of the waiver can be found at: G:\Legal\Transfers - General\Transfer Agreements\FY07 State Kazakhstan Waiver.pdf.

The President issued the required certification allowing for 2006 funds to be made available for the Government of the Russian Federation. However, a determination was made that 2007 funds may not be used for projects with the Government of the Russian Federation because it has not complied with this provision.

War Crimes in Africa (FY 2006 Section 590):

The Congress reaffirms its support for the efforts of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) to bring justice individuals responsible for war crimes and crimes against humanity in a timely manner.

Funds appropriated by this Act, including funds for debt restructuring, may be made available for assistance to the central government of a country in which individuals indicted by the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) are credibly alleged to be living, if the Secretary of State determines and reports to the Committees on Appropriations that such government is cooperating with ICTR and SCSL, including the surrender and transfer of indictees in a timely manner. This requirement shall not apply to assistance provided under section 551 of the FAA (Peacekeeping Operations) or to project assistance under title II of this Act (Bilateral Economic Assistance).

Assistance may be made available for the central Government of Nigeria after 120 days following enactment of this Act only if the President submits a report to the Committees on Appropriations, in classified form if necessary, on (1) the steps taken in fiscal years 2003, 2004, and 2005 to obtain the cooperation of the Government of Nigeria in surrendering Charles Taylor to the SCSL; and (2) a strategy, including a timeline, for bringing Charles Taylor before the SCSL.

Prohibition on Police Training (FAA Section 660):

Except under limited circumstances, no assistance may be provided for foreign police, prisons, law enforcement or intelligence services. This prohibition is discussed in more detail in Section V of this memorandum.

Transfers:

Please note that funding received by way of transfers from other agencies often carries legislative restrictions (Support for Eastern Europe Democracy Act {SEED}, Freedom Support Act {FSA}, Economic Support Fund {ESF}, etc.).

#### **IV. Changes from 2006**

The only change made to the FY2006 Act in the Continuing Appropriations Resolution, 2007 which affects USTDA is as follows: **Section 554 of the FY2006 Act** prohibited assistance to Cambodia, subject to several exceptions. This prohibition has been lifted for 2007 funds by Section 20409 of the Continuing Appropriations Resolution, 2007.

## **V. Recent Statutory Issues at USTDA**

A recurring issue in many USTDA activities arises from the Agency's "Nationality Requirements," which are published on the Agency's website. These requirements derive from the Agency's organic statute (see Section II above). Other common issues include:

### Thailand Military Coup

As stated above, Section 508 of the FY2006 Act states that foreign assistance may not be provided to the government of any country whose duly elected head of government is deposed by military coup or decree. Section 617(a) of the FAA, however, enables agencies to "wind up" projects within countries that are restricted from receiving U.S. foreign assistance. On September 19, 2006, a military coup deposed the democratically-elected government of Thailand. In order to balance our interest in complying with the law and carrying out the important projects already begun, USTDA analyzed the status of each of our projects in Thailand, winding up those appropriate for such treatment and suspending the rest.

### Police Training Prohibition

Under FAA Section 660, no assistance may be provided for foreign police, prisons, law enforcement or intelligence services. The statute provides for very limited exceptions.

### Authority to de-obligate and re-obligate funds

About two years ago, USTDA concluded that we have the authority to de-obligate and re-obligate our transferred SEED, FSA, and ESF funds (but not our core funds) after the expiration of the original date of availability (within specific boundaries.) USTDA is seeking to get our organic legislation, §661 of the FAA, included in the list of funds that fall within this authority for de-ob and re-ob in order for the Agency to be able to use core funds past the original date of expiration.

## **VI. Transfer Fund Agreements**

A list of agreements between USTDA and other Government agencies for the transfer of funds can be found in the "Transfer Agreement Index" on the USTDA Intranet, under "Legal Documents & Logs." This list is updated as new transfer agreements are signed.

**Transfer Agreement Index**  
**Last Updated 8/8/07**

<b>Region</b>	<b>Country/ Area</b>	<b>Fiscal Year</b>	<b>Source of Funds Received</b>	<b>Destination of Funds Transferred</b>	<b>Amount</b>	<b>Authority</b>	<b>Obligated By</b>	<b>Purpose</b>
Africa/Middle East	Botswana	2000		FAA	\$129,166	632(b) FAA	12/31/01 (estimated completion date)	Cover costs in providing training for Botswana Dept. of Civil Aviation
Africa/Middle East	Egypt	1998	USAID		\$521,000	§632(a) of the FAA, 1998 FOAA	9/30/1998	Conference on privatization
Africa/Middle East	Iraq	2004	[USAID]		[\$2,000,000]	[632(a) FAA, FY04 Emergency Supp.]	[9/30/06]	[IRRF II, Ministry of Oil training program—not signed]
Africa/Middle East	Iraq	2003	USAID		\$5,000,000	632(a) FAA; FY03 Foreign Ops. Approp. Act - IRRF		Iraq Reconstruction and Relief Fund (IRRF), signed Dec. 22, 2003; Amendment No. 1 signed April 2, 2004.
Africa/Middle East	Morocco	2005	DOS		\$450,000	632(a) FAA, FY03 FOAA (ESF)		To fund programs promoting public-private partnerships and trade capacity building in support of US-Morocco FTA (no signed agreement)

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Africa/Middle East	Nigeria	2003	USAID		\$350,000	632(a) FAA, (ESF) FY03 FOAA	9/30/2004	Nigeria Non-Oil Production Sectors; USAID Audit. Signed Aug. 29, 2003
Africa/Middle East	Nigeria	2001	USAID		\$750,000	§632(a) of the FAA, 2001 FOAA	9/30/2002	FS to support AGOA (Africa Growth and Opportunity Act)
Africa/Middle East	Nigeria	2000	USAID		\$1,300,000	§ 632(b) of the FAA, (22 USC 2392(b))	9/30/2001	Support USAID/Nigeria's Special Objective to "Improve Management of Critical Elements of the Infrastructure and Energy Sector"
Africa/Middle East	North Africa	2000	USAID		\$1,001,000	§632(a) FAA	7/15/2001	Economic Support Funds – used for USNAEP (US-N. Africa Economic Partnership program for Algeria, Morocco and Tunisia.(see AM for specific uses in certain industries)

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Africa/Middle East	South Africa	1998	EX-IM		\$15,000* *\$5,000 for FY98, \$10,000 SAF		—	Temporary assignment of Mr. Newell in Johannesburg to pursue outreach of the Southern Africa Development Community ("SADC")
Africa/Middle East	South Africa	1997		FCC	\$8,000	632(b) FAA		To support SATRA workshop (no original transfer agreement in file)
Africa/Middle East	Sub-Saharan Africa	<a href="#">2006</a>	USAID		\$500,000	632(a) FAA	9/30/2007	To support the objectives and achieve results sought under African Global Competitiveness Initiative (AGCI)
Asia	China	2007		FAA	\$86,023	632(b) FAA	6/30/08 (estimated completion date)	To cover costs FAA will incur under US-China Aviation Cooperation Program (ACP) Phase III
Asia	China	2005 Annual		USDA	\$145,000	632(b) FAA	4/1/07 (estimated completion date)	Borlaug Training, Signed 9/27/05

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Asia	Indian Ocean	2005 (Emergency Supplemental P.L. 109-13)	USAID		\$6,000,000	632(a)	9/30/2006	Tsunami Recovery (signed 7/26/05)
Asia	Philippines	2000		DOC-FCS		Economy Act		Office space and support services in Manila for TDA regional office
Asia	Pakistan	1993	USAID		\$2,000,000		9/30/1994	Pakistan Private Sector Power
Asia	Singapore	1992	USAID		\$500,000 (Possible second transfer of \$500,000?)	632(b) FAA	9/30/94, extended to 9/30/98	Used for US-AEP program.
Asia	Thailand	2001		NOAA	\$250,000	§632(b) of the FAA (22 USC 2392)		Training for Thailand Meteorology Department per Sept. 10, 1996 Grant Agreement between TDA and TMD
Asia	Vietnam	2004		FAA	\$21,500	632(b) FAA		To cover costs FAA incurred while providing technical assistance to Civil Aviation Administration of Vietnam, Vietnam Airlines, etc.

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Eurasia	Afghanistan	<a href="#">2004/5</a>	USAID		\$3,500,000	Sec. 632(a), ESF	9/30/2005	Natural resources and seismic work; signed 9/17/04; Amendment to add breadth to permitted activities, signed 8/15/05
Eurasia	Turkey	2001	USCG		\$75,000	14 USC 141, 22 USC 2321j	9/30/2001	USCG international training services to Turkey Maritime Affairs
Eurasia	Caspian Finance Center (CFC)	2004	OPIC		\$200,000	632(b)	—	MOA for OPIC FY04 expenses re Caspian Finance Center (CFC); signed 3/3/04.
Eurasia	Caspian Finance Center (CFC)	2003		FCS			—	MOU re Internet, FCS Lotus notes, and Local Area Network.
Eurasia	Caspian Finance Center (CFC)	2003	OPIC		\$200,000	632(b) FAA	—	OPIC's portion of the expenses incurred in FY2002 in re the Center.
Eurasia	Caspian Finance Center (CFC)	2001	OPIC		\$200,000	632(a) FAA	—	OPIC's portion of the expenses incurred in FY2002 in re the Center.



Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Eurasia	Caspian Finance Center (CFC)	2001		EXIM	\$100,000	632(a) FAA	9/30/2001	Must come from FSA funds. Fund the travel of EXIM staff to the Caspian region.
Eurasia	Caspian Finance Center (CFC)	2000	DOS		\$2,000,000	632(a) FAA	9/30/2001	Funds may be used to support FS. \$235,000 will support the CFC. In addition to the \$235,000, \$200,000 will be contributed by OPIC using FSA funds.
Eurasia	Caspian Finance Center (CFC)	2000		EXIM	\$150,000	632(b) FAA	6/30/02 (completion date)	Travel related to Zagreb office.
Eurasia	Caspian Finance Center (CFC)	1999	OPIC		\$273,000		—	OPIC's portion of the expenses incurred in FY1999 in re the Center.
Eurasia	Caspian Finance Center (CFC)	1998	EXIM		\$15,000		—	EXIM's participation in training program organized by TDA for NIS.

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Eurasia	Caspian Finance Center (CFC)	1998	OPIC		\$15,000		—	Istanbul Training conference (NIS)
Eurasia	Caspian Finance Center (CFC)	1998	DOS		\$1,500,000	632(a) FAA		FS and other project planning activities in the NIS. \$850,000 is likely to be used for non-Russian NIS. (no agreement, just CN)
Eurasia	Caspian Finance Center (CFC)	1998	DOS		\$547,000	632(a) FAA		Establish a Caspian Trade and Investment Center in Turkey. (no agreement, just CN)
Eurasia	FSA	<a href="#">2006</a>	USAID		\$1,980,000	632(a)	9/30/2007	Economic Dev. Programs to benefit IS countries (signed 8/2/06)

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Eurasia	FSA	<a href="#">2005</a>	USAID		\$2,500,000	632(a)	9/30/2006	Eligible countries of Eurasia – TDA may only obligate 40% of funds budgeted for assistance to the Government of the Russian Federation unless certain certification requirements are met. (signed 7/1/05)
Eurasia	FSA	<a href="#">2004</a>	USAID		\$3,100,000	632(a) FAA, FSA	9/30/2005	Eligible countries of Eurasia – TDA may only obligate 40% of funds budgeted for assistance to the Government of the Russian Federation unless certain certification requirements are met. (signed 6/15/04)

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Eurasia	FSA-NIS	<a href="#">2003</a>	USAID		\$5,000,000	632(a) FAA, FSA	9/30/2004	NIS – Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. (signed Aug. 14, 2003).
Eurasia	FSA-NIS	<a href="#">2002</a>	USAID		\$5,000,000	632(a) FAA, FSA	9/30/2003	NIS – TDA may only obligate 40% of funds budgeted for assistance to the Government of the Russian Federation unless certain certification requirements are met.
Eurasia	FSA-NIS	<a href="#">2002</a>	USAID		\$1,500,000	632(a) FAA, FSA	9/30/2003	NIS

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Eurasia	FSA-NIS	<a href="#">2001</a>	USAID		\$5,000,000	632(a) FAA, FSA	9/30/2002	NIS – TDA may only obligate 40% of funds budgeted for assistance to the Government of the Russian Federation unless certain certification requirements are met.
Eurasia	FSA-NIS	2000	USAID		\$2,000,000	632(a) FAA, FSA	9/30/2001	NIS – TDA may only obligate 50% of funds budgeted for assistance to the Government of the Russian Federation unless certain certification requirements are met.
Eurasia	FSA-NIS	1999	USAID		\$6,000,000	632(a) FAA, FSA	9/30/2000	NIS - (given in two installments of \$3,000,000)
Eurasia	FSA-NIS	1998	USAID		\$6,000,000	632(a) FAA, FSA	9/30/1999	NIS
Eurasia	FSA-NIS	1998	USAID		\$1,800,000	632(a) FAA, FSA	9/30/1999	NIS
Eurasia	FSA-NIS	1997	USAID		\$5,000,000	632(a) FAA, FSA	9/30/1998	NIS

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Eurasia	FSA-NIS	1996	USAID		\$10,000,000	632(a) FAA, FSA		NIS (CN, activity data sheet only— no signed transfer agreement in file)
Eurasia	FSA-NIS	1995	USAID		\$10,000,000	632(a) FAA, FSA	—	NIS, signed April 30, 1996
Eurasia	FSA-NIS	1995	USAID		\$17,000,000	632(a) FAA, FSA	—	NIS (\$9,000,000 and \$8,000,000)
Eurasia	FSA-NIS	1994	USAID		\$3,000,000	632(a) FAA, FSA	9/30/97 (project completion date)	NIS
Eurasia	Private Sector Initiative	1992	USAID		\$5,000,000	632(b) FAA		Assistance to US companies interested NIS.
Europe	Balkans	2004	USAID		\$1,500,000	632(a) FAA, SEED		Activities in Albania, Bosnia- Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Romania, Republic of Montenegro in Fed of Serbia and Montenegro; NOT Serbia -not yet signed

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Europe	Balkans	<a href="#">2003</a>	USAID		\$4,000,000	632(a) FAA, SEED	9/30/04	Activities in the Balkan states. Restrictions related to Bosnia-Herzegovina, Kosovo, Croatia, Serbia and Montenegro
Europe	Balkans	<a href="#">2002</a>	USAID		\$6,265,000	632(a) FAA, SEED	9/30/03	Activities in the Balkan states, other than Serbia and the Foca and Pale municipalities of the Republic Srbska.
Europe	Balkans	<a href="#">2001</a>	USAID		\$6,515,000	632(a) FAA, SEED	9/30/02	Activities in the Balkans (Albania, Croatia, Bosnia-Herzegovina, Bulgaria, Macedonia, Montenegro and Romania)
Europe	Balkans	2000		EXIM	\$150,000	632(a) FAA, SEED	9/30/01	Transfer to EXIM to fund travel of business development officers through the Balkans to advise foreign buyers and banks.

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Europe	Balkans	<a href="#">2000</a>	USAID		\$6,425,000	632(a) FAA, SEED	9/30/01	To be used for Albania, Croatia, Bosnia- Herzegovina, Bulgaria, Macedonia, and Romania
Europe	Balkans	1999	USAID		\$8,000,000	632(a) FAA, SEED	9/30/00	SBDI
Europe	Balkans	1999	USAID		\$26,740	632(a) FAA, SEED	9/30/00	Conference on Investment Financing in the Balkans in Montenegro. (This and the entry above in 1999 and the Bosnia- Herzegovina transfer in 1999 add up to \$9,026,740)
Europe	Balkans	1998	USAID		\$8,000,000	632(a) FAA, SEED	—	SBDI
Europe	Balkans	1997	USAID		\$7,000,000	632(a) FAA, SEED	—	SBDI (came as 4.5 and 2.5 million)
Europe	Balkans	1996	USAID		\$7,000,000	632(a) FAA, SEED	—	SBDI



Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Europe	Balkans	1993	USAID		\$2,500,000	632(b) FAA, SEED	9/30/95 (project completion date)	ABI in Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Albania, Lithuania, Latvia, Estonia and Slovenia.
Europe	Bosnia- Herzegovina	2000	USAID		\$1,000,000	632(a) FAA, SEED	9/30/01	IIDP - Promote US commercial efforts in Bosnia- Herzegovina
Europe	Bosnia- Herzegovina	1999	USAID		\$1,000,000	632(a) FAA, SEED	9/30/00	IIDP - Promote US commercial efforts in Bosnia- Herzegovina
Europe	Bosnia- Herzegovina	1998	USAID		\$4,000,000	632(a) FAA, SEED	9/30/99	IIDP in Bosnia- Herzegovina
Europe	Bosnia- Herzegovina	1997	USAID		\$4,000,000	632(a) FAA, SEED	—	IIDP in Bosnia- Herzegovina
Europe	Bosnia- Herzegovina	1996	USAID		\$2,000,000	632(a) FAA, SEED		IIDP in Bosnia- Herzegovina (from a 10,000,000 AAEB grant) (No Transfer Agreement in File)

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Europe	Bosnia- Herzegovina	1995	USAID		\$150,000	632(b) FAA, SEED	3/30/96 (project completion date)	Preliminary technical assessment in re energy, water/waste water, transportation, telecom.
Europe	Croatia	1997		US Army Corps of Engineers	\$10,784	621(a), 632(b) FAA, 10 USC 3036(d)(2)	—	Participation of USACE expert in negotiations concerning Port of Ploce, Croatia
Europe	Romania	2006	USAID		\$425,000	632(a) FAA, SEED	9/30/07	Signed 4/21/06. Use funds to continue program of advancing economic development and US commercial interests in Romania
Europe	Romania	1995		DOE	\$110,998	632(a) FAA		Reimbursement of expenses in connection with conference on US Power Technologies for Eastern Europe and the Former Soviet Union
Europe	Serbia	<a href="#">2005</a>	USAID		\$650,000	632(a), SEED	9/30/06	Serbia -signed Sept. 23, 2005

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Europe	Montenegro, Romania, and Serbia	<a href="#">2005</a>	USAID		\$1,625,000	632(a), SEED	9/30/06	Montenegro, Romania, and Serbia. -signed June 1, 2005
Europe	Serbia and Montenegro	<a href="#">2003</a>	USAID		\$2,000,000	632(a) FAA, SEED (FY03 FOAA)	9/30/04	Activities in Serbia and Montenegro. Signed 8/18/03
Europe	Serbia	<a href="#">2002</a>	USAID		\$1,000,000	632(a) FAA, SEED	9/30/03	Support of export and investment promotion in Serbia.
Europe	Serbia	2001	USAID		\$310,000	632(a) FAA, SEED	9/30/02	Funds used to begin the program in Serbia.
ME/NA/SA	India	2007		State	\$80,000	632(b) FAA		Funds covering hire by State's Economic Section at US Embassy in New Delhi of FSN to work as Trade Policy and Program Coordinator for USTDA in India
ME/NA/SA	India	2001		FAA	\$156,200	632(b) FAA	6/30/02 (estimated completion date)	Implementation of training workshop for civil aviation authorities of India in 10/01

Region	Country/ Area	Fiscal Year	Source of Funds Received	Destination of Funds Transferred	Amount	Authority	Obligated By	Purpose
Misc.	Payroll System	1998	Denver Administrative Service Center		\$26,000 (yearly budget)	Economy Act (31 USC 1535)		Implementation of the DASC payroll operations procedures
Misc.	Payroll System	1997	Washington Administrative Service Center- West (DOI)		\$88,500	Economy Act (31 USC 1535), P.L. 103-356 (Government Management Reform Act of 1994)	11/30/97 (End Performance Date)	Convert TDA financial accounting system to Federal Financial System
Misc.	Power Sector	1999	DOE		\$37,500			
Misc.	Technology Transfer	1994	DOE		\$1,748,686		4/99	Innovative Clean Coal Technology Transfer Program
Misc.	Technology Transfer	1993	DOE		\$150,000		10/31/98	Innovative Clean Coal Technology Transfer Program/Orissa Steel Plant Project
Misc.	Emerging Markets	1997	USDA		\$100,000			Peanut Project – Russia/CIS
Misc.	Travel Services	2002/03		USITC	\$6,917.50	Economy Act		Obtain travel management services from ITC.
Misc.	Library Support and Westlaw Access	1999		Library of Congress	\$4,460.85	Economy Act and FAR 17.5		Use for Library and Westlaw.

#### Definitions

1. FAA – Foreign Assistance Act of 1961
2. FSA – FREEDOM Support Act
3. SEED – Support for East European Democracy Act of 1989
4. AAEB – Assistance for Eastern Europe and the Baltic States [category of funds obligated under the SEED Act]
5. BIF – Balkan Infrastructure Fund
6. IFI Trust Fund –
7. Regional Finance Center
8. SBDI – South Balkan Development Initiative [category of funds obligated under the SEED Act]
9. IIDP – Infrastructure and Industrial Development Program [category of funds obligated under the SEED Act]
10. ABI – American Business Initiative [category of funds obligated under the SEED Act]

\* NIS (Newly Independent States) – Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. (as defined in FY 2003)

\*Balkans – Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Romania, Serbia & Montenegro. (there may be restrictions on SEED funds for certain countries for certain FY.)

\*South Balkans – Albania, Macedonia, Bulgaria (according to the SBDI)



## MEMORANDUM

TO: All Staff

FROM: Amy Lorenzini and Tom Hardy

RE: FY 2008 State & Foreign Operations Appropriations –  
Foreign Assistance Restrictions and Notification Requirements

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The U.S. Trade and Development Agency (USTDA) is governed primarily by the Foreign Assistance Act of 1961 (FAA) and the annual Foreign Operations appropriation act. These designate how the agency's funds are to be used. Please take note of the following general items and restrictions that are stated within the FAA and the fiscal year (FY) 2008 Appropriations Act.

### Funds Appropriated to USTDA (Title II):

USTDA has been appropriated \$50,400,000 to remain available until September 30, 2009. From this amount, an across the board rescission of .81% was enacted making our effective appropriation for FY08 \$49,777,778

### Unobligated Balances Report (Section 604):

Any Department or Agency to which funds are appropriated or otherwise made available by this Act shall provide to the Committees on Appropriations a quarterly accounting of cumulative balances by program, project, and activity of the funds received by such Department or Agency in this fiscal year or any previous fiscal year that remain unobligated and unexpended. (USTDA Finance office will provide this report to the Hill.)

### Representational Funds (Section 605):

USTDA has funds available not to exceed \$4,000 for representation and entertainment allowances.

### Prohibition on Taxation of United States Assistance (Section 606):

(a) PROHIBITION ON TAXATION - None of the funds appropriated under titles II through V of this Act may be made available to provide assistance for a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government, and the Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform with this requirement.

(b) REIMBURSEMENT OF FOREIGN TAXES- An amount equivalent to 200 percent of the total taxes assessed during fiscal year 2008 on funds appropriated by this Act by a foreign government or entity against commodities financed under United States assistance programs for which funds are appropriated by this Act, either directly or through grantees, contractors and

subcontractors shall be withheld from obligation from funds appropriated for assistance for fiscal year 2009 and allocated for the central government of such country and for the West Bank and Gaza Program to the extent that the Secretary of State certifies and reports in writing to the Committees on Appropriations that such taxes have not been reimbursed to the Government of the United States.

(c) DE MINIMIS EXCEPTION- Foreign taxes of a de minimis nature shall not be subject to the provisions of subsection (b).

#### **Country Prohibitions (Section 607):**

Foreign assistance may not be provided to Cuba, North Korea, Iran, and Syria.

#### **Military Coups (Section 608):**

None of the funds appropriated or otherwise made available pursuant to titles II through V of this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup or decree.\*

\* See OGC

#### **Transfer Authority (Section 609):**

(b) EXPORT FINANCING TRANSFER AUTHORITIES- Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 2008, for programs under title II of this Act may be transferred between such appropriations for use for any of the purposes, programs, and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer: Provided, That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

(c)(1) LIMITATION ON TRANSFERS BETWEEN AGENCIES- None of the funds made available under titles II through V of this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

(2) Notwithstanding paragraph (1), in addition to transfers made by, or authorized elsewhere in, this Act, funds appropriated by this Act to carry out the purposes of the Foreign Assistance Act of 1961 may be allocated or transferred to agencies of the United States Government pursuant to the provisions of sections 109, 610, and 632 of the Foreign Assistance Act of 1961.

#### **De-Ob/Re-Ob Authority (Section 611):**

USTDA funds shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act.

#### **Limitation on Assistance to Countries in Default (Section 612):**



Foreign assistance shall not be used to furnish assistance to the government of any country which is in default during a period in excess of one calendar year in payment to the United States of principal or interest on any loan made to the government of such country by the United States pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the Committees on Appropriations, that assistance to such country is in the national interest of the United States.

#### **Commerce and Trade (Section 613):**

(a) None of the funds appropriated or made available pursuant to titles II through V of this Act for direct assistance and none of the funds otherwise made available to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity: Provided, That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity, and the Chairman of the Board so notifies the Committees on Appropriations.

#### **Independent States of the Former Soviet Union (Section 617):**

(a) None of the funds appropriated under the heading 'Assistance for the Independent States of the Former Soviet Union' shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union, such as those violations included in the Helsinki Final Act: Provided, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States.

(c) Funds appropriated under the heading 'Assistance for the Independent States of the Former Soviet Union' for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan shall be subject to the regular notification procedures of the Committees on Appropriations.

(d) Funds made available in this Act for assistance for the Independent States of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961.

#### **Congressional Notification (Section 620):**

Foreign assistance may not be provided to the following countries without prior (15 day) notification to the Congress: Serbia, Sudan, Zimbabwe, Pakistan, Cuba, Iran, Haiti, Libya, Ethiopia, Mexico, Nepal, or Cambodia.

- Definition of 15-day notification: Day one of the 15-day notification timeframe begins the day after the Congressional Notification has been delivered to Capitol Hill. Obligations may occur the day after the 15-day notification has expired.

#### **Prohibition on Bilateral Assistance to Terrorist Countries (Section 626):**

(a) Funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines--

- (1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or
- (2) otherwise supports international terrorism.

#### **Impact on Jobs in the United States (Section 632):**

None of the funds appropriated under titles II through V of this Act may be obligated or expended to provide--

- (1) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; or
- (2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: *Provided*, That the application of section 507(4)(D) and (E) of such Act should be commensurate with the level of development of the recipient country and sector, and shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

#### **Special Authorities (Section 634):**

(a) AFGHANISTAN, IRAQ, PAKISTAN, LEBANON, MONTENEGRO, VICTIMS OF WAR, DISPLACED CHILDREN, AND DISPLACED BURMESE- Funds appropriated under titles II through V of this Act that are made available for assistance for Afghanistan may be made available notwithstanding section 612 of this Act or any similar provision of law and section 660 of the Foreign Assistance Act of 1961, and funds appropriated in titles II and III of this Act that are made available for Iraq, Lebanon, Montenegro, Pakistan, and for victims of war, displaced children, and displaced Burmese, and to assist victims of trafficking in persons and, subject to the regular notification procedures of the Committees on Appropriations, to combat such trafficking, may be made available notwithstanding any other provision of law.

#### **Reservation of Funds (Section 637):**

(a) Funds appropriated under titles II through V of this Act which are specifically designated may be reprogrammed for other programs within the same account notwithstanding the designation if compliance with the designation is made impossible by operation of any provision of this or any other Act: *Provided*, That any such reprogramming shall be subject to the regular

notification procedures of the Committees on Appropriations: Provided further, That assistance that is reprogrammed pursuant to this subsection shall be made available under the same terms and conditions as originally provided.

(b) In addition to the authority contained in subsection (a), the original period of availability of funds appropriated by this Act and administered by the United States Agency for International Development that are specifically designated for particular programs or activities by this or any other Act shall be extended for an additional fiscal year if the Administrator of such agency determines and reports promptly to the Committees on Appropriations that the termination of assistance to a country or a significant change in circumstances makes it unlikely that such designated funds can be obligated during the original period of availability: Provided, That such designated funds that are continued available for an additional fiscal year shall be obligated only for the purpose of such designation.

(c) Ceilings and specifically designated funding levels contained in this Act shall not be applicable to funds or authorities appropriated or otherwise made available by any subsequent Act unless such Act specifically so directs. Specifically designated funding levels or minimum funding requirements contained in any other Act shall not be applicable to funds appropriated by this Act.

#### **Nongovernmental Organizations – (Section 641):**

None of the funds appropriated or made available pursuant to titles II through V of this Act shall be available to a nongovernmental organization, including any contractor, which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

#### **Prohibition on Assistance to Foreign Governments that Export Lethal Military Equipment to Countries Supporting International Terrorism (Section 642):**

(a) None of the funds appropriated or otherwise made available by titles II through V of this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 6(j) of the Export Administration Act of 1979. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

#### **Limitation on Assistance for the PLO for the West Bank and Gaza (Section 644):**

None of the funds appropriated under titles II through V of this Act may be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104-107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect: Provided, That if the President fails to make the certification under section 604(b)(2) of the Middle East Peace Facilitation Act of 1995 or to suspend the prohibition under other legislation, funds appropriated by this Act may not be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza.

### **Restrictions Concerning the Palestinian Authority (Section 647):**

None of the funds appropriated under titles II through V of this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: Provided, That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: Provided further, That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

### **Prohibition of Payment of Certain Expenses (Section 648):**

None of the funds appropriated or otherwise made available through 'Economic Support Fund' may be obligated or expended to pay for--

- (1) alcoholic beverages; or
- (2) entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

### **Authorization Requirement (Section 653):**

Funds appropriated by this Act, except funds appropriated under the headings 'Trade and Development Agency' and 'Overseas Private Investment Corporation', may be obligated and expended notwithstanding section 10 of Public Law 91-672 and section 15 of the State Department Basic Authorities Act of 1956.\*

\*See OGC

### **Libya (Section 654):**

None of the funds appropriated or otherwise made available by this Act shall be obligated or expended to finance directly any assistance for Libya.

### **Palestinian Statehood (Section 655):**

(a) LIMITATION ON ASSISTANCE- None of the funds appropriated under titles II through V of this Act may be provided to support a Palestinian state.\*

\*See OGC

### **Prohibition on Assistance to the Palestinian Broadcasting Corporation (Section 656):**

None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

**Sudan (Section 666):**

(a) LIMITATION ON ASSISTANCE:

(1) Notwithstanding any other provision of law, none of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.\*

\*See OGC

**Limitation on Economic Support Fund Assistance for Certain Foreign Governments that are Parties to the International Criminal Court (Section 671):**

(a) None of the funds made available in this Act under the heading 'Economic Support Fund' may be used to provide assistance to the government of a country that is a party to the International Criminal Court and has not entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country.\*

\*See OGC

**Uzbekistan (Section 685):**

(a) Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress--

(1) in meeting its commitments under the 'Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America', including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media; and

(2) in investigating and prosecuting the individuals responsible for the deliberate killings of civilians in Andijan in May 2005.\*

\*See OGC

**Repression in the Russian Federation (Section 686):**

(a) None of the funds appropriated for assistance under this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation:

(1) has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party; and

(2) is (A) honoring its international obligations regarding freedom of expression, assembly, and press, as well as due process; (B) investigating and prosecuting law enforcement personnel credibly alleged to have committed human rights abuses against political leaders, activists and journalists; and (C) immediately releasing political leaders, activists and journalists who remain in detention.

(b) The Secretary of State may waive the requirements of subsection (a) if the Secretary determines that to do so is important to the national interests of the United States.

#### Attendance International Conferences (Section 696):

None of the funds made available in this Act may be used to send or otherwise pay for the attendance of more than 50 employees of agencies or departments of the United States Government who are stationed in the United States, at any single international conference occurring outside the United States, unless the Secretary of State determines that such attendance is in the national interest: Provided, That for purposes of this section the term 'international conference' shall mean a conference attended by representatives of the United States Government and representatives of foreign governments, international organizations, or nongovernmental organizations.

#### Saudi Arabia (Section 697):

None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance any assistance to Saudi Arabia: Provided, That the President may waive the prohibition of this section if the President certifies to the Committees on Appropriations, 15 days prior to the obligation of funds for assistance for Saudi Arabia, that Saudi Arabia is cooperating with efforts to combat international terrorism and that the proposed assistance will help facilitate that effort.

#### Central Asia (Section 698):

(a) Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights and civil liberties during the preceding 6 month period, including by fulfilling obligations recommended by the Organization for Security and Cooperation in Europe (OSCE) in the areas of election procedures, media freedom, freedom of religion, free assembly and minority rights, and by meeting the commitments it made in connection with its assumption of the Chairmanship of the OSCE in 2010.

(b) The Secretary of State may waive subsection (a) if the Secretary determines and reports to the Committees on Appropriations that such a waiver is important to the national security of the United States.

#### Serbia (Section 699D):

(a) Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2008, if the President has made the determination and certification contained in subsection (c).

(c) The determination and certification referred to in subsection (a) is a determination by the President and a certification to the Committees on Appropriations that the Government of Serbia is--

(1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, timely information on the location, movement, and sources of financial support of indictees, and the surrender and transfer of indictees or assistance in their apprehension, including Ratko Mladic and Radovan Karadzic;

(2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.

(d) This section shall not apply to Kosovo, humanitarian assistance or assistance to promote democracy.

**Iraq (Section 699K):**

(a) None of the funds appropriated or otherwise made available by this Act may be made available for assistance for Iraq.

**Across the Board Rescission Section (699P):**

(a) BILL-WIDE RESCISSIONS- There is hereby rescinded an amount equal to .81 percent of the budget authority provided for fiscal year 2008 for any discretionary account in this Act.





## MEMORANDUM

TO: All Staff

FROM: Amy Lorenzini

RE: FY 2009 Omnibus Appropriations Act – State & Foreign Operations  
Foreign Assistance Restrictions and Notification Requirements

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The U.S. Trade and Development Agency (USTDA) is governed primarily by the Foreign Assistance Act of 1961 (FAA), Section 661 and the annual State & Foreign Operations Appropriation Act. These designate how the agency's funds are to be used. Please take note of the following general items and restrictions that are stated within the FY 2009 Omnibus Appropriations Act, Division H: Department of State, Foreign Operations and other Related Agencies.

### TRADE AND DEVELOPMENT AGENCY (Title VI, Export and Investment Assistance):

USTDA is appropriated \$50,800,000 which will remain available until September 30, 2010 for necessary expenses to carry out the provisions of section 661 of the Foreign Assistance Act of 1961.

### UNOBLIGATED BALANCES REPORT

SEC. 7002. All Departments and Agencies shall provide to the Committees on Appropriations a quarterly accounting of cumulative balances by program, project, and activity of the funds in this fiscal year or any previous fiscal year that remain unobligated and unexpended.

### PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 7007. None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran, or Syria.

### MILITARY COUPS

SEC. 7008. None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup or decree.

### TRANSFER AUTHORITY

SEC. 7009. (e) AUDIT OF INTER-AGENCY TRANSFERS- Any agreement for the transfer or allocation of funds appropriated by this Act, or prior Acts, entered into between the United States Agency for International Development and another agency of the United States Government under the authority of section 632(a) of the Foreign Assistance Act of 1961 or any comparable provision of law, shall expressly provide that the Office of the Inspector General for

the agency receiving the transfer or allocation of such funds shall perform periodic program and financial audits of the use of such funds: *Provided*, That funds transferred under such authority may be made available for the cost of such audits.

### AVAILABILITY OF FUNDS

SEC. 7011. No part of any appropriation contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly so provided in this Act: *Provided*, That funds appropriated for the purposes of chapters 1, 8, 11, and 12 of part I, section 661, section 667, chapters 4, 5, 6, 8, and 9 of part II of the Foreign Assistance Act of 1961 shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act.

### LIMITATION ON ASSISTANCE TO COUNTRIES IN DEFAULT

SEC. 7012. No part of any appropriation provided under titles III through VI in this Act shall be used to furnish assistance to the government of any country which is in default during a period in excess of one calendar year in payment to the United States of principal or interest on any loan made to the government of such country by the United States pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the Committees on Appropriations, that assistance to such country is in the national interest of the United States.

### PROHIBITION ON TAXATION OF UNITED STATES ASSISTANCE

SEC. 7013. (a) PROHIBITION ON TAXATION- None of the funds appropriated under titles III through VI of this Act may be made available to provide assistance for a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government, and the Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform with this requirement.

(c) DE MINIMIS EXCEPTION- Foreign taxes of a de minimis nature shall not be subject to the provisions of subsection (b).

### REPROGRAMMING NOTIFICATION REQUIREMENTS (Congressional Notification)

SEC. 7015. (a) None of the funds made available in title I of this Act, or in prior appropriations Acts to the agencies and departments funded by this Act that remain available for obligation or expenditure in fiscal year 2009, or provided from any accounts in the Treasury of the United States derived by the collection of fees or of currency reflows or other offsetting collections, or made available by transfer, to the agencies and departments funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) closes or opens a mission or post; (6) reorganizes or renames offices; (7)

reorganizes programs or activities; or (8) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.

(b) For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds provided under title I of this Act, or provided under previous appropriations Acts to the agency or department funded under title I of this Act that remain available for obligation or expenditure in fiscal year 2009, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agency or department funded by title I of this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$750,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.

(c) For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds made available under titles II through V in this Act under the headings 'Global Health and Child Survival', 'Development Assistance', 'International Organizations and Programs', 'Trade and Development Agency', 'International Narcotics Control and Law Enforcement', 'Andean Counterdrug Programs', 'Assistance for Europe, Eurasia and Central Asia', 'Economic Support Fund', 'Democracy Fund', 'Peacekeeping Operations', 'Capital Investment Fund', 'Operating Expenses', 'Office of Inspector General', 'Nonproliferation, Anti-terrorism, Demining and Related Programs', 'Millennium Challenge Corporation', 'Foreign Military Financing Program', 'International Military Education and Training', 'Peace Corps', and 'Migration and Refugee Assistance', shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Committees on Appropriations for obligation under any of these specific headings unless the Committees on Appropriations are previously notified 15 days in advance: *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: *Provided further*, That this subsection shall not apply to any reprogramming for an activity, program, or project for which funds are appropriated under titles II through IV of this Act of less than 10 percent of the amount previously justified to the Congress for obligation for such activity, program, or project for the current fiscal year.

(f) None of the funds appropriated under titles III through VI of this Act shall be obligated or expended for assistance for **Serbia, Sudan, Zimbabwe, Pakistan, Dominican Republic, Cuba, Iran, Haiti, Libya, Ethiopia, Nepal, Mexico, or Cambodia** and countries listed in section 7045(f)(4) of this Act except as provided through the regular notification procedures of the Committees on Appropriations.

## PROHIBITION OF PAYMENT OF CERTAIN EXPENSES

SEC. 7020. None of the funds appropriated or otherwise made available by this Act under the headings 'International Military Education and Training' or 'Foreign Military Financing Program' for Informational Program activities or under the headings 'Global Health and Child Survival', 'Development Assistance', and 'Economic Support Fund' may be obligated or expended to pay for--

- (1) alcoholic beverages; or
- (2) entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

## PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

SEC. 7021. (a) None of the funds appropriated or otherwise made available by titles III through VI of this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a government that supports international terrorism for purposes of section 6(j) of the Export Administration Act of 1979.

## PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES

SEC. 7022. (a) Funds appropriated for bilateral assistance under any heading in titles III through VI of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines--

- (1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or
- (2) otherwise supports international terrorism.

(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

## AUTHORIZATION REQUIREMENTS

SEC. 7023. Funds appropriated by this Act, except funds appropriated under the heading 'Trade and Development Agency', may be obligated and expended notwithstanding section 10 of Public Law 91-672, section 15 of the State Department Basic Authorities Act of 1956, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

## COMMERCE, TRADE AND SURPLUS COMMODITIES

SEC. 7026. (a) None of the funds appropriated or made available pursuant to titles III through VI of this Act for direct assistance and none of the funds otherwise made available to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

(b) None of the funds appropriated by this or any other Act to carry out chapter I of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States: Provided, That this subsection shall not prohibit--

- (1) activities designed to increase food security in developing countries where such activities will not have a significant impact on the export of agricultural commodities of the United States; or
- (2) research activities intended primarily to benefit American producers.

## IMPACT ON JOBS IN THE UNITED STATES

SEC. 7029. None of the funds appropriated under titles III through VI of this Act may be obligated or expended to provide--

(1) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; or

(2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: Provided, That the application of section 507(4)(D) and (E) of such Act should be commensurate with the level of development of the recipient country and sector, and shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

## SPECIAL AUTHORITIES

SEC. 7034. (a) AFGHANISTAN, IRAQ, PAKISTAN, LEBANON, MONTENEGRO, VICTIMS OF WAR, DISPLACED CHILDREN, AND DISPLACED BURMESE- Funds appropriated under titles III through VI of this Act that are made available for assistance for Afghanistan may be made available notwithstanding section 7012 of this Act or any similar provision of law and section 660 of the Foreign Assistance Act of 1961, and funds appropriated in titles III and VI of this Act that are made available for Iraq, Lebanon, Montenegro, Pakistan, and for victims of war,

displaced children, and displaced Burmese, and to assist victims of trafficking in persons and, subject to the regular notification procedures of the Committees on Appropriations, to combat such trafficking, may be made available notwithstanding any other provision of law.

(b)(1) WAIVER- The President may waive the provisions of section 1003 of Public Law 100-204 if the President determines and certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that it is important to the national security interests of the United States.

(2) PERIOD OF APPLICATION OF WAIVER- Any waiver pursuant to paragraph (1) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(e) RECONSTITUTING CIVILIAN POLICE AUTHORITY- In providing assistance with funds appropriated by this Act under section 660(b)(6) of the Foreign Assistance Act of 1961, support for a nation emerging from instability may be deemed to mean support for regional, district, municipal, or other sub-national entity emerging from instability, as well as a nation emerging from instability.

## PALESTINIAN STATEHOOD

SEC. 7036. (a) Limitation on Assistance- None of the funds appropriated under titles III through VI of this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that--

(1) the governing entity of a new Palestinian state--

(A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;

(B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures, and is cooperating with appropriate Israeli and other appropriate security organizations; and

(2) the Palestinian Authority (or the governing entity of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships, which should include--

(A) termination of all claims or states of belligerency;

(B) respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area through measures including the establishment of demilitarized zones;

(C) their right to live in peace within secure and recognized boundaries free from threats or acts of force;

(D) freedom of navigation through international waterways in the area; and

(E) a framework for achieving a just settlement of the refugee problem.

(b) Sense of Congress- It is the sense of Congress that the governing entity should enact a constitution assuring the rule of law, an independent judiciary, and respect for human rights for its citizens, and should enact other laws and regulations assuring transparent and accountable governance.

(c) Waiver- The President may waive subsection (a) if he determines that it is important to the national security interests of the United States to do so.

(d) Exemption- The restriction in subsection (a) shall not apply to assistance intended to help reform the Palestinian Authority and affiliated institutions, or the governing entity, in order to help meet the requirements of subsection (a), consistent with the provisions of section 7040 of this Act ('Limitation on Assistance to the Palestinian Authority').

### RESTRICTIONS CONCERNING THE PALESTINIAN AUTHORITY

SEC. 7037. None of the funds appropriated under titles II through VI of this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: Provided, That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: Provided further, That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

### PROHIBITION ON ASSISTANCE TO THE PALESTINIAN BROADCASTING CORPORATION

SEC. 7038. None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

### ASSISTANCE FOR THE WEST BANK AND GAZA

SEC. 7039. (a) Oversight- For fiscal year 2009, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the Committees on Appropriations that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading 'Economic Support Fund' for the West Bank and Gaza.

(b) Vetting- Prior to the obligation of funds appropriated by this Act under the heading 'Economic Support Fund' for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity nor, with respect to private entities or educational institutions, those that have as a principal officer of the entity's governing board or governing board of trustees any individual that has

been determined to be involved in, or advocating terrorist activity or determined to be a member of a designated foreign terrorist organization. The Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which she has determined to be involved in or advocating terrorist activity.

(c) Prohibition-

(1) None of the funds appropriated under titles III through VI of this Act for assistance under the West Bank and Gaza Program may be made available for the purpose of recognizing or otherwise honoring individuals who commit, or have committed acts of terrorism.

(2) Notwithstanding any other provision of law, none of the funds made available by this or prior appropriations act, including funds made available by transfer, may be made available for obligation for security assistance for the West Bank and Gaza until the Secretary of State reports to the Committees on Appropriations on the benchmarks that have been established for security assistance for the West Bank and Gaza and reports on the extent of Palestinian compliance with such benchmarks.

(d) Audits-

(1) The Administrator of the United States Agency for International Development shall ensure that Federal or non-Federal audits of all contractors and grantees, and significant subcontractors and sub-grantees, under the West Bank and Gaza Program, are conducted at least on an annual basis to ensure, among other things, compliance with this section.

(2) Of the funds appropriated by this Act up to \$500,000 may be used by the Office of the Inspector General of the United States Agency for International Development for audits, inspections, and other activities in furtherance of the requirements of this subsection. Such funds are in addition to funds otherwise available for such purposes.

(e) Subsequent to the certification specified in subsection (a), the Comptroller General of the United States shall conduct an audit and an investigation of the treatment, handling, and uses of all funds for the bilateral West Bank and Gaza Program, including all funds provided as cash transfer assistance, in fiscal year 2009 under the heading 'Economic Support Fund'. The audit shall address--

(1) the extent to which such Program complies with the requirements of subsections (b) and (c), and

(2) an examination of all programs, projects, and activities carried out under such Program, including both obligations and expenditures.

(f) Funds made available in this Act for West Bank and Gaza shall be subject to the regular notification procedures of the Committees on Appropriations.

(g) Not later than 180 days after enactment of this Act, the Secretary of State shall submit a report to the Committees on Appropriations updating the report contained in section 2106 of chapter 2 of title II of Public Law 109-13.



## LIMITATION ON ASSISTANCE FOR THE PALESTINIAN AUTHORITY

**SEC. 7040.** (a) Prohibition of Funds- None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority.

(b) Waiver- The prohibition included in subsection (a) shall not apply if the President certifies in writing to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Committees on Appropriations that waiving such prohibition is important to the national security interests of the United States.

(c) Period of Application of Waiver- Any waiver pursuant to subsection (b) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(d) Report- Whenever the waiver authority pursuant to subsection (b) is exercised, the President shall submit a report to the Committees on Appropriations detailing the justification for the waiver, the purposes for which the funds will be spent, and the accounting procedures in place to ensure that the funds are properly disbursed. The report shall also detail the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure.

(e) Certification- If the President exercises the waiver authority under subsection (b), the Secretary of State must certify and report to the Committees on Appropriations prior to the obligation of funds that the Palestinian Authority has established a single treasury account for all Palestinian Authority financing and all financing mechanisms flow through this account, no parallel financing mechanisms exist outside of the Palestinian Authority treasury account, and there is a single comprehensive civil service roster and payroll.

(f) Prohibition-

(1) None of the funds appropriated in titles III through VI of this Act may be obligated for salaries of personnel of the Palestinian Authority located in Gaza or may be obligated or expended for assistance to Hamas or any entity effectively controlled by Hamas or any power-sharing government of which Hamas is a member unless the President certifies in writing and reports to the Committees on Appropriations that Hamas has accepted and is complying with the principles contained in section 620K(b)(1)(A) and (B) of the Foreign Assistance Act of 1961, as amended.

(2) None of the funds appropriated under titles III through VI of this Act may be obligated for assistance for the Palestine Liberation Organization.

## IRAQ

**SEC. 7042.** (a) ASSISTANCE- None of the funds appropriated or otherwise made available by this Act may be made available for assistance for Iraq, except funds appropriated by this Act under the heading 'Nonproliferation, Anti-terrorism, Demining and Related Programs' for the removal and disposal of landmines and other unexploded ordnance, small arms and light weapons in Iraq.

(b) MATCHING REQUIREMENT- The terms and conditions of section 1402(e)(1), (2), (3) and (4) of Public Law 110-252 shall apply to assistance for Iraq in fiscal year 2009.

(c) TRANSITION PLAN- Not later than 180 days after enactment of this Act, the Secretary of State, in consultation with relevant United States Government agencies, shall submit to the Committees on Appropriations a report, in classified form if necessary, that details the plans, costs and timelines associated with the transition of programs and activities funded under titles III through VI of this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs to the Government of Iraq.

(d) BASE RIGHTS- None of the funds made available in this Act may be used by the Government of the United States to enter into a permanent basing rights agreement between the United States and Iraq.

#### ATTENDANCE AT INTERNATIONAL CONFERENCES

SEC. 7053. None of the funds made available in this Act may be used to send or otherwise pay for the attendance of more than 50 employees of agencies or departments of the United States Government who are stationed in the United States, at any single international conference occurring outside the United States, unless the Secretary of State reports to the Committees on Appropriations that such attendance is in the national interest: *Provided*, That for purposes of this section the term 'international conference' shall mean a conference attended by representatives of the United States Government and of foreign governments, international organizations, or nongovernmental organizations.

#### REQUESTS FOR DOCUMENTS

SEC. 7067. None of the funds appropriated or made available pursuant to titles III through VI of this Act shall be available to a nongovernmental organization, including any contractor, which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

#### AFRICA

SEC. 7070. (b)(1) Sudan Limitation on Assistance- Subject to subsection (2):

(A) Notwithstanding any other provision of law, none of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.

(B) None of the funds appropriated by this Act may be made available for the cost, as defined in section 502, of the Congressional Budget Act of 1974, of modifying loans and loan guarantees held by the Government of Sudan, including the cost of selling, reducing, or canceling amounts owed to the United States, and modifying concessional loans, guarantees, and credit agreements.

(2) Subsection (b)(1) shall not apply if the Secretary of State determines and certifies to the Committees on Appropriations that:

(A) The Government of Sudan honors its pledges to cease attacks upon civilians and disarms and demobilizes the Janjaweed and other government-supported militias.

(B) The Government of Sudan and all government-supported militia groups are honoring their commitments made in all previous cease-fire agreements.

(C) The Government of Sudan is allowing unimpeded access to Darfur to humanitarian aid organizations, the human rights investigation and humanitarian teams of the United Nations, including protection officers, and an international monitoring team that is based in Darfur and has the support of the United States.

(3) Exceptions- The provisions of subsection (b)(1) shall not apply to--

(A) humanitarian assistance;

(B) assistance for the Darfur region, Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei; and

(C) assistance to support implementation of the Comprehensive Peace Agreement and the Darfur Peace Agreement or any other internationally-recognized viable peace agreement in Sudan.

(4) Definitions- For the purposes of this Act, the term 'Government of Sudan' shall not include the Government of Southern Sudan.

(5) Notwithstanding any other law, assistance in this Act may be made available to the Government of Southern Sudan to provide non-lethal military assistance, military education and training, and defense services controlled under the International Traffic in Arms Regulations (22 CFR 120.1 et seq.) if the Secretary of State--

(A) determines that the provision of such items is in the national interest of the United States; and

(B) not later than 15 days before the provision of any such assistance, notifies the Committees on Appropriations of such determination.

## SERBIA

**SEC. 7072.** (a) Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2009, if the President has made the determination and certification contained in subsection (c).

(b) After May 31, 2009, the Secretary of the Treasury should instruct the United States executive directors to the international financial institutions to support loans and assistance to the Government of Serbia subject to the conditions in subsection (c).

(c) The determination and certification referred to in subsection (a) is a determination and a certification by the President to the Committees on Appropriations that the Government of Serbia is--

(1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, timely information on the location, movement, and sources of financial support of indictees, and the surrender and transfer of indictees or assistance in their apprehension, including Ratko Mladic;

(2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.

(d) This section shall not apply humanitarian assistance or assistance to promote democracy.

#### INDEPENDENT STATES OF THE FORMER SOVIET UNION

**SEC. 7073.** (a) None of the funds appropriated under the heading 'Assistance for Europe, Eurasia and Central Asia' shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union, such as those violations included in the Helsinki Final Act: Provided, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States.

(b) Funds appropriated under the heading 'Assistance for Europe, Eurasia and Central Asia' for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan shall be subject to the regular notification procedures of the Committees on Appropriations.

(c)(1) Of the funds appropriated under the heading 'Assistance for Europe, Eurasia and Central Asia' that are allocated for assistance for the Government of the Russian Federation, 60 percent shall be withheld from obligation until the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation--

- (A) has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability; and
- (B) is providing full access to international non-government organizations providing humanitarian relief to refugees and internally displaced persons in Chechnya.

(2) Paragraph (1) shall not apply to--

- (A) assistance to combat infectious diseases, child survival activities, or assistance for victims of trafficking in persons; and
- (B) activities authorized under title V (Nonproliferation and Disarmament Programs and Activities) of the FREEDOM Support Act.

(d) Section 907 of the FREEDOM Support Act shall not apply to--

- (1) activities to support democracy or assistance under title V of the FREEDOM Support Act and section 1424 of Public Law 104-201 or non-proliferation assistance;
- (2) any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421);
- (3) any activity carried out by a member of the United States and Foreign Commercial Service while acting within his or her official capacity;
- (4) any insurance, reinsurance, guarantee or other assistance provided by the Overseas Private Investment Corporation under title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2191 et seq.);
- (5) any financing provided under the Export-Import Bank Act of 1945; or
- (6) humanitarian assistance.

#### REPRESSION IN THE RUSSIAN FEDERATION

**SEC. 7074.** (a) None of the funds appropriated under the heading 'Assistance for Europe, Eurasia and Central Asia' in this Act may be made available for the Government of the Russian

Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation: (1) has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party; and (2) is (A) honoring its international obligations regarding freedom of expression, assembly, and press, as well as due process; (B) investigating and prosecuting law enforcement personnel credibly alleged to have committed human rights abuses against political leaders, activists and journalists; and (C) immediately releasing political leaders, activists and journalists who remain in detention.

(b) The Secretary of State may waive the requirements of subsection (a) if the Secretary determines that to do so is important to the national interests of the United States.

### CENTRAL ASIA

SEC. 7075. (a) Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights and civil liberties during the preceding 6 month period, including by fulfilling obligations recommended by the Organization for Security and Cooperation in Europe (OSCE) in the areas of election procedures, media freedom, freedom of religion, free assembly and minority rights, and by meeting the commitments it made in connection with its assumption of the Chairmanship of the OSCE in 2010.

(b) The Secretary of State may waive subsection (a) if the Secretary determines and reports to the Committees on Appropriations that such a waiver is important to the national security of the United States.

(c) Not later than October 1, 2009, the Secretary of State shall submit a report to the Committees on Appropriations describing the following:

- (1) The defense articles, defense services, and financial assistance provided by the United States to the countries of Central Asia during the 12-month period ending 30 days prior to submission of such report.
- (2) The use during such period of defense articles, defense services, and financial assistance provided by the United States by units of the armed forces, border guards, or other security forces of such countries.

(d) For purposes of this section, the term 'countries of Central Asia' means Uzbekistan, Kazakhstan, Kyrgyz Republic, Tajikistan, and Turkmenistan.

### UZBEKISTAN

SEC. 7076. (a) Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress--

(1) in meeting its commitments under the 'Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America', including respect for internationally recognized human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media; and

(2) in investigating and prosecuting the individuals responsible for the deliberate killings of civilians in Andijan in May 2005.

(b) If the Secretary of State has credible evidence that any current or former official of the Government of Uzbekistan was responsible for the deliberate killings of civilians in Andijan in May 2005, or for other violations of internationally recognized human rights in Uzbekistan, not later than 6 months after enactment of this Act any person identified by the Secretary pursuant to this subsection shall be ineligible for admission to the United States.

(c) The restriction in subsection (b) shall cease to apply if the Secretary determines and reports to the Committees on Appropriations that the Government of Uzbekistan has taken concrete and measurable steps to improve respect for internationally recognized human rights, including allowing peaceful political and religious expression, releasing imprisoned human rights defenders, and implementing recommendations made by the United Nations on torture.

(d) The Secretary may waive the application of subsection (b) if the Secretary determines that admission to the United States is necessary to attend the United Nations or to further United States law enforcement objectives.

(e) For the purpose of this section 'assistance' shall include excess defense articles.



# ANALYSIS

## FY 2010 Omnibus Appropriations Act – State & Foreign Operations Foreign Assistance Restrictions and Notification Requirements

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The U.S. Trade and Development Agency (USTDA) is governed primarily by the Foreign Assistance Act of 1961 (FAA), Section 661 and the annual State & Foreign Operations Appropriation Act. These designate how the agency's funds are to be used. Please take note of the following general items and restrictions that are stated within the FY 2010 Omnibus Appropriations Act.

### TRADE AND DEVELOPMENT AGENCY (Title VI, Export and Investment Assistance):

USTDA is appropriated \$55,200,000 which will remain available until September 30, 2011 for necessary expenses to carry out the provisions of section 661 of the Foreign Assistance Act of 1961.

### UNOBLIGATED BALANCES REPORT

SEC. 7002. All Departments and Agencies shall provide to the Committees on Appropriations a quarterly accounting of cumulative balances by program, project, and activity of the funds in this fiscal year or any previous fiscal year that remain unobligated and unexpended.

### PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 7007. None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran, or Syria.

### MILITARY COUPS

SEC. 7008. None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup or decree.

### TRANSFER AUTHORITY

SEC. 7009. (e) AUDIT OF INTER-AGENCY TRANSFERS- Any agreement for the transfer or allocation of funds appropriated by this Act, or prior Acts, entered into between the United States Agency for International Development and another agency of the United States Government under the authority of section 632(a) of the Foreign Assistance Act of 1961 or any comparable provision of law, shall expressly provide that the Office of the Inspector General for the agency receiving the transfer or allocation of such funds shall perform periodic program and financial audits of the use of such funds: *Provided*, That funds transferred under such authority may be made available for the cost of such audits.



## AVAILABILITY OF FUNDS

SEC. 7011. No part of any appropriation contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly so provided in this Act: Provided, That funds appropriated for the purposes of chapters 1, 8, 11, and 12 of part I, **section 661**, section 667, chapters 4, 5, 6, 8, and 9 of part II of the Foreign Assistance Act of 1961 shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act.

## LIMITATION ON ASSISTANCE TO COUNTRIES IN DEFAULT

SEC. 7012. No part of any appropriation provided under titles III through VI in this Act shall be used to furnish assistance to the government of any country which is in default during a period in excess of one calendar year in payment to the United States of principal or interest on any loan made to the government of such country by the United States pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the Committees on Appropriations, that assistance to such country is in the national interest of the United States.

## PROHIBITION ON TAXATION OF UNITED STATES ASSISTANCE

SEC. 7013. (a) PROHIBITION ON TAXATION- None of the funds appropriated under titles III through VI of this Act may be made available to provide assistance for a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government, and the Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform with this requirement.

(c) DE MINIMIS EXCEPTION- Foreign taxes of a de minimis nature shall not be subject to the provisions of subsection (b).

## REPROGRAMMING NOTIFICATION REQUIREMENTS (Congressional Notification)

SEC. 7015. (a) None of the funds made available in title I of this Act, or in prior appropriations Acts to the agencies and departments funded by this Act that remain available for obligation or expenditure in fiscal year 2010, or provided from any accounts in the Treasury of the United States derived by the collection of fees or of currency reflows or other offsetting collections, or made available by transfer, to the agencies and departments funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) closes or opens a mission or post; (6) reorganizes or renames offices; (7) reorganizes programs or activities; or (8) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.

(b) For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds provided under title I of this Act, or provided under previous appropriations Acts to the agency or department funded under title I of this Act that remain available for obligation or expenditure in fiscal year 2010, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agency or department funded by title I of this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$750,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.

(c) For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds made available under titles II through V in this Act under the headings 'Global Health and Child Survival', 'Development Assistance', 'International Organizations and Programs', 'Trade and Development Agency', 'International Narcotics Control and Law Enforcement', 'Andean Counterdrug Programs', 'Assistance for Europe, Eurasia and Central Asia', 'Economic Support Fund', 'Democracy Fund', 'Peacekeeping Operations', 'Capital Investment Fund', 'Operating Expenses', 'Office of Inspector General', 'Nonproliferation, Anti-terrorism, Demining and Related Programs', 'Millennium Challenge Corporation', 'Foreign Military Financing Program', 'International Military Education and Training', 'Peace Corps', and 'Migration and Refugee Assistance', shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Committees on Appropriations for obligation under any of these specific headings unless the Committees on Appropriations are previously notified 15 days in advance: *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: *Provided further*, That this subsection shall not apply to any reprogramming for an activity, program, or project for which funds are appropriated under titles II through IV of this Act of less than 10 percent of the amount previously justified to the Congress for obligation for such activity, program, or project for the current fiscal year.

(f) None of the funds appropriated under titles III through VI of this Act shall be obligated or expended for assistance for **Serbia, Sudan, Zimbabwe, Pakistan, Dominican Republic, Cuba, Iran, Haiti, Libya, Ethiopia, Nepal, Colombia, Mexico, Kazakhstan, Somalia, Sri Lanka or Cambodia** and countries listed in section 7045(f)(4) of this Act except as provided through the regular notification procedures of the Committees on Appropriations.

**PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT  
LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL  
TERRORISM**

**SEC. 7021.** (a) None of the funds appropriated or otherwise made available by titles III through VI of this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a government that supports international terrorism for purposes of section 6(j) of the Export Administration Act of 1979.

#### **PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES**

**SEC. 7022.** (a) Funds appropriated for bilateral assistance under any heading in titles III through VI of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines--

- (1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or
- (2) otherwise supports international terrorism.

(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

#### **AUTHORIZATION REQUIREMENTS**

**SEC. 7023.** Funds appropriated by this Act, except funds appropriated under the heading 'Trade and Development Agency', may be obligated and expended notwithstanding section 10 of Public Law 91-672, section 15 of the State Department Basic Authorities Act of 1956, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

#### **COMMERCE, TRADE AND SURPLUS COMMODITIES**

**SEC. 7026.** (a) None of the funds appropriated or made available pursuant to titles III through VI of this Act for direct assistance and none of the funds otherwise made available to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

(b) None of the funds appropriated by this or any other Act to carry out chapter I of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for

export which would compete with a similar commodity grown or produced in the United States: Provided, That this subsection shall not prohibit--

- (1) activities designed to increase food security in developing countries where such activities will not have a significant impact on the export of agricultural commodities of the United States; or
- (2) research activities intended primarily to benefit American producers.

## IMPACT ON JOBS IN THE UNITED STATES

SEC. 7029. None of the funds appropriated under titles III through VI of this Act may be obligated or expended to provide--

(1) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; or

(2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: Provided, That the application of section 507(4)(D) and (E) of such Act should be commensurate with the level of development of the recipient country and sector, and shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

## SPECIAL AUTHORITIES

### PALESTINIAN STATEHOOD

SEC. 7036. (a) Limitation on Assistance- None of the funds appropriated under titles III through VI of this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that--

- (1) the governing entity of a new Palestinian state--
  - (A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;
  - (B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures, and is cooperating with appropriate Israeli and other appropriate security organizations; and
- (2) the Palestinian Authority (or the governing entity of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships, which should include--
  - (A) termination of all claims or states of belligerency;
  - (B) respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area through measures including the establishment of demilitarized zones;

- (C) their right to live in peace within secure and recognized boundaries free from threats or acts of force;
- (D) freedom of navigation through international waterways in the area; and
- (E) a framework for achieving a just settlement of the refugee problem.

(b) Sense of Congress- It is the sense of Congress that the governing entity should enact a constitution assuring the rule of law, an independent judiciary, and respect for human rights for its citizens, and should enact other laws and regulations assuring transparent and accountable governance.

(c) Waiver- The President may waive subsection (a) if he determines that it is important to the national security interests of the United States to do so.

(d) Exemption- The restriction in subsection (a) shall not apply to assistance intended to help reform the Palestinian Authority and affiliated institutions, or the governing entity, in order to help meet the requirements of subsection (a), consistent with the provisions of section 7040 of this Act ('Limitation on Assistance to the Palestinian Authority').

#### **RESTRICTIONS CONCERNING THE PALESTINIAN AUTHORITY**

**SEC. 7037.** None of the funds appropriated under titles II through VI of this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: Provided, That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: Provided further, That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

#### **PROHIBITION ON ASSISTANCE TO THE PALESTINIAN BROADCASTING CORPORATION**

**SEC. 7038.** None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

#### **ASSISTANCE FOR THE WEST BANK AND GAZA**

**SEC. 7039.** (a) Oversight- For fiscal year 2010, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the Committees on Appropriations that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information

in order to review the uses of United States assistance for the Program funded under the heading 'Economic Support Fund' for the West Bank and Gaza.

(b) Vetting- Prior to the obligation of funds appropriated by this Act under the heading 'Economic Support Fund' for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity nor, with respect to private entities or educational institutions, those that have as a principal officer of the entity's governing board or governing board of trustees any individual that has been determined to be involved in, or advocating terrorist activity or determined to be a member of a designated foreign terrorist organization. The Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which she has determined to be involved in or advocating terrorist activity.

(c) Prohibition-

(1) None of the funds appropriated under titles III through VI of this Act for assistance under the West Bank and Gaza Program may be made available for the purpose of recognizing or otherwise honoring individuals who commit, or have committed acts of terrorism.

(2) Notwithstanding any other provision of law, none of the funds made available by this or prior appropriations act, including funds made available by transfer, may be made available for obligation for security assistance for the West Bank and Gaza until the Secretary of State reports to the Committees on Appropriations on the benchmarks that have been established for security assistance for the West Bank and Gaza and reports on the extent of Palestinian compliance with such benchmarks.

(d) Audits-

(1) The Administrator of the United States Agency for International Development shall ensure that Federal or non-Federal audits of all contractors and grantees, and significant subcontractors and sub-grantees, under the West Bank and Gaza Program, are conducted at least on an annual basis to ensure, among other things, compliance with this section.

(2) Of the funds appropriated by this Act up to \$500,000 may be used by the Office of the Inspector General of the United States Agency for International Development for audits, inspections, and other activities in furtherance of the requirements of this subsection. Such funds are in addition to funds otherwise available for such purposes.

(e) Subsequent to the certification specified in subsection (a), the Comptroller General of the United States shall conduct an audit and an investigation of the treatment, handling, and uses of all funds for the bilateral West Bank and Gaza Program, including all funds provided as cash transfer assistance, in fiscal year 2010 under the heading 'Economic Support Fund'. The audit shall address--

(1) the extent to which such Program complies with the requirements of subsections (b) and (c), and

(2) an examination of all programs, projects, and activities carried out under such Program, including both obligations and expenditures.

(f) Funds made available in this Act for West Bank and Gaza shall be subject to the regular notification procedures of the Committees on Appropriations.

(g) Not later than 180 days after enactment of this Act, the Secretary of State shall submit a report to the Committees on Appropriations updating the report contained in section 2106 of chapter 2 of title II of Public Law 109-13.

#### LIMITATION ON ASSISTANCE FOR THE PALESTINIAN AUTHORITY

**SEC. 7040.** (a) Prohibition of Funds- None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority.

(b) Waiver- The prohibition included in subsection (a) shall not apply if the President certifies in writing to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Committees on Appropriations that waiving such prohibition is important to the national security interests of the United States.

(c) Period of Application of Waiver- Any waiver pursuant to subsection (b) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(d) Report- Whenever the waiver authority pursuant to subsection (b) is exercised, the President shall submit a report to the Committees on Appropriations detailing the justification for the waiver, the purposes for which the funds will be spent, and the accounting procedures in place to ensure that the funds are properly disbursed. The report shall also detail the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure.

(e) Certification- If the President exercises the waiver authority under subsection (b), the Secretary of State must certify and report to the Committees on Appropriations prior to the obligation of funds that the Palestinian Authority has established a single treasury account for all Palestinian Authority financing and all financing mechanisms flow through this account, no parallel financing mechanisms exist outside of the Palestinian Authority treasury account, and there is a single comprehensive civil service roster and payroll.

(f) Prohibition-

(1) None of the funds appropriated in titles III through VI of this Act may be obligated for salaries of personnel of the Palestinian Authority located in Gaza or may be obligated or expended for assistance to Hamas or any entity effectively controlled by Hamas or any power-sharing government of which Hamas is a member unless the President certifies in writing and reports to the Committees on Appropriations that Hamas has accepted and is complying with the principles contained in section 620K(b)(1)(A) and (B) of the Foreign Assistance Act of 1961, as amended.

(2) None of the funds appropriated under titles III through VI of this Act may be obligated for assistance for the Palestine Liberation Organization.

## SAUDI ARABIA

SEC. 7041. NONE OF THE FUNDS MADE AVAILABLE IN THIS ACT MAY BE OBLIGATED OR EXPENDED TO FINANCE ANY ASSISTANCE TO SAUDI ARABIA.

## WESTERN HEMISPHERE (CONGRESSIONAL NOTIFICATION REQUIREMENT FROM SEC. 7015)

SEC. 7045. (f)2 Definition – For the purposes of this subsection, the term countries of “Central America” means Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

## REQUESTS FOR DOCUMENTS

SEC. 7067. None of the funds appropriated or made available pursuant to titles III through VI of this Act shall be available to a nongovernmental organization, including any contractor, which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

## AFRICA

SEC. 7070. (F)(1) Sudan Limitation on Assistance- Subject to subsection (2):

(A) Notwithstanding any other provision of law, none of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.

(2) Subsection (F)(1) shall not apply if the Secretary of State determines and certifies to the Committees on Appropriations that:

(A) The Government of Sudan honors its pledges to cease attacks upon civilians and disarms and demobilizes the Janjaweed and other government-supported militias.

(B) The Government of Sudan and all government-supported militia groups are honoring their commitments made in all previous cease-fire agreements.

(C) The Government of Sudan is allowing unimpeded access to Darfur to humanitarian aid organizations, the human rights investigation and humanitarian teams of the United Nations, including protection officers, and an international monitoring team that is based in Darfur and has the support of the United States.

(3) Exceptions- The provisions of subsection (b)(1) shall not apply to--

(A) humanitarian assistance;

(B) assistance for the Darfur region, Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei; and

(C) assistance to support implementation of the Comprehensive Peace Agreement and the Darfur Peace Agreement or any other internationally-recognized viable peace agreement in Sudan.

(4) Definitions- For the purposes of this Act, the term ‘Government of Sudan’ shall not include the Government of Southern Sudan.



(5) Notwithstanding any other law, assistance in this Act may be made available to the Government of Southern Sudan to provide non-lethal military assistance, military education and training, and defense services controlled under the International Traffic in Arms Regulations (22 CFR 120.1 et seq.) if the Secretary of State--

(A) determines that the provision of such items is in the national interest of the United States; and

(B) not later than 15 days before the provision of any such assistance, notifies the Committees on Appropriations of such determination.

## SERBIA

SEC. 7072. (a) Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2010, if the President has made the determination and certification contained in subsection (c).

(b) After May 31, 2010, the Secretary of the Treasury should instruct the United States executive directors to the international financial institutions to support loans and assistance to the Government of Serbia subject to the conditions in subsection (c).

(c) The determination and certification referred to in subsection (a) is a determination and a certification by the President to the Committees on Appropriations that the Government of Serbia is--

(1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, timely information on the location, movement, and sources of financial support of indictees, and the surrender and transfer of indictees or assistance in their apprehension, including Ratko Mladic;

(2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.

(d) This section shall not apply humanitarian assistance or assistance to promote democracy.

## INDEPENDENT STATES OF THE FORMER SOVIET UNION

SEC. 7073. (a) None of the funds appropriated under the heading 'Assistance for Europe, Eurasia and Central Asia' shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union, such as those violations included in the Helsinki Final Act: Provided, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States.

(b) Funds appropriated under the heading 'Assistance for Europe, Eurasia and Central Asia' for the Russian Federation, Armenia, Kazakhstan, and Uzbekistan shall be subject to the regular notification procedures of the Committees on Appropriations.

(c)(1) Of the funds appropriated under the heading 'Assistance for Europe, Eurasia and Central Asia' that are allocated for assistance for the Government of the Russian Federation, 60 percent shall be withheld from obligation until the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation--

- (A) has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability; and
- (B) is providing full access to international non-government organizations providing humanitarian relief to refugees and internally displaced persons in Chechnya.

(2) Paragraph (1) shall not apply to--

- (A) assistance to combat infectious diseases, child survival activities, or assistance for victims of trafficking in persons; and
- (B) activities authorized under title V (Nonproliferation and Disarmament Programs and Activities) of the FREEDOM Support Act.

(d) Section 907 of the FREEDOM Support Act shall not apply to--

- (1) activities to support democracy or assistance under title V of the FREEDOM Support Act and section 1424 of Public Law 104-201 or non-proliferation assistance;
- (2) any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421);
- (3) any activity carried out by a member of the United States and Foreign Commercial Service while acting within his or her official capacity;
- (4) any insurance, reinsurance, guarantee or other assistance provided by the Overseas Private Investment Corporation under title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2191 et seq.);
- (5) any financing provided under the Export-Import Bank Act of 1945; or
- (6) humanitarian assistance.

## CENTRAL ASIA

**SEC. 7075.** (a) Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights and civil liberties during the preceding 6 month period, including by fulfilling obligations recommended by the Organization for Security and Cooperation in Europe (OSCE) in the areas of election procedures, media freedom, freedom of religion, free assembly and minority rights, and by meeting the commitments it made in connection with its assumption of the Chairmanship of the OSCE in 2010.

(b) The Secretary of State may waive subsection (a) if the Secretary determines and reports to the Committees on Appropriations that such a waiver is important to the national security of the United States.

**SEC. 7076.** (a) Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress--

- (1) in meeting its commitments under the 'Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of

America', including respect for internationally recognized human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media; and

(2) in investigating and prosecuting the individuals responsible for the deliberate killings of civilians in Andijan in May 2005.

(b) If the Secretary of State has credible evidence that any current or former official of the Government of Uzbekistan was responsible for the deliberate killings of civilians in Andijan in May 2005, or for other violations of internationally recognized human rights in Uzbekistan, not later than 6 months after enactment of this Act any person identified by the Secretary pursuant to this subsection shall be ineligible for admission to the United States.

(c) The restriction in subsection (b) shall cease to apply if the Secretary determines and reports to the Committees on Appropriations that the Government of Uzbekistan has taken concrete and measurable steps to improve respect for internationally recognized human rights, including allowing peaceful political and religious expression, releasing imprisoned human rights defenders, and implementing recommendations made by the United Nations on torture.

(d) The Secretary may waive the application of subsection (b) if the Secretary determines that admission to the United States is necessary to attend the United Nations or to further United States law enforcement objectives.

(e) For the purpose of this section 'assistance' shall include excess defense articles.