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TOBACCO EXPORTS

USDA's Foreign Agricultural Service Lacks Specific Guidance for Congressional Restrictions on Promoting Tobacco



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Highlights of [GAO-03-618](#), a report to congressional requesters

Why GAO Did This Study

Since 1994, the Agriculture Appropriations Act has prohibited the funding of tobacco export programs and restricted the U.S. Department of Agriculture's (USDA) tobacco-related activities. Since 1998, the Commerce, Justice, and State Appropriations Act has placed similar restrictions on the Departments of Commerce and State and the Office of the U.S. Trade Representative (USTR), although it has not prohibited them from addressing foreign discriminatory trade practices. Congressional requesters asked GAO to (1) assess the agencies' guidance on the restrictions to their overseas personnel, (2) describe how the agencies' activities changed in response to the restrictions, and (3) identify the mechanisms that the agencies use to monitor compliance.

What GAO Recommends

To ensure that FAS fully addresses congressional restrictions on the promotion of tobacco or tobacco-related products, we recommend that the Secretary of Agriculture (1) develop guidance that reflects FAS's specific restrictions and (2) review FAS's tobacco-related activities to determine whether they are consistent with the restrictions. In response to our draft, FAS stated it will issue guidance but does not believe that the restrictions cover the collection and dissemination of tobacco related information.

www.gao.gov/cgi-bin/getrpt?GAO-03-618.

To view the full report, including the scope and methodology, click on the link above. For more information, contact David Gootnick at (202) 512-3149 or gootnickd@gao.gov.

TOBACCO EXPORTS

USDA's Foreign Agricultural Service Lacks Specific Guidance for Congressional Restrictions on Promoting Tobacco

What GAO Found

Commerce, State, and USTR have issued timely guidance implementing the tobacco-related restrictions specified in their annual appropriations act. However, USDA's Foreign Agricultural Service (FAS) has not issued guidance specific to its appropriations act. Instead, since 1998, FAS has relied on the tobacco-related guidance in a periodic cable sent to the overseas staffs of USDA, State, Commerce, and USTR. This guidance does not address whether certain FAS activities, such as providing tobacco-related information reports and assisting in trade negotiations on tobacco-related issues, are consistent with USDA's 1994 restrictions. GAO did not seek to determine whether ongoing FAS activities are prohibited by the appropriations restrictions.

The agencies have discontinued some tobacco-related activities and continued others. For instance, Commerce overseas staff ceased providing market research information to tobacco exporters, but staffs of Commerce and State still provide routine business assistance to exporters. FAS ended the tobacco component of USDA's Export Credit Guarantee Program, Foreign Market Development Program, and Market Access Program. However, FAS has continued, as part of its commodity-reporting program, to gather and disseminate tobacco-related information that identifies foreign production and consumption rates, import trends, and changes in foreign regulations. Our analysis showed that some of FAS's reports provided insights into market niches for tobacco exporters.

To monitor compliance with the restrictions, senior FAS and Foreign Commercial Service officers at overseas posts review their staffs' tobacco-related activities. Overseas staffs refer to headquarters U.S. firms' requests for assistance that could violate the restrictions contained in the periodic guidance.

Agency 1998 tobacco guidance prohibits:

- Promoting the sale or export of tobacco or tobacco-related products and assisting with the efforts of U.S. firms or individuals that sell or export such products
- Participating in trade events or receptions sponsored by tobacco interests
- Challenging host country laws and regulations directed toward reducing the negative impact of tobacco

Source: GAO.

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Abbreviations

FAS	Foreign Agricultural Service
FCS	Foreign Commercial Service
HHS	Department of Health and Human Services
USDA	U.S. Department of Agriculture
USTR	Office of the U.S. Trade Representative

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Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

May 30, 2003

The Honorable Richard J. Durbin
Ranking Minority Member
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Governmental Affairs
United States Senate

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

The Honorable Lloyd Doggett
House of Representatives

Since fiscal year 1994, the annual Agriculture Appropriations Act has prohibited the U.S. Department of Agriculture's (USDA) Foreign Agricultural Service (FAS) from using appropriated funds to promote the sale or export of tobacco or tobacco products. Additionally, since fiscal year 1998, the Commerce, Justice,¹ and State Appropriations Act similarly has prohibited those agencies, including the Office of the U.S. Trade Representative (USTR), from using appropriated funds to promote the sale or export of tobacco or tobacco products and from seeking the removal of nondiscriminatory foreign restrictions on the marketing of tobacco. While both appropriations acts prohibit agencies from helping U.S. firms market tobacco products overseas, they differ in that the 1998 Act allows the Departments of Commerce and State and USTR to address potentially discriminatory trade practices faced by U.S. tobacco firms.

As you requested, this report (1) assesses the tobacco-related policy guidance on restrictions issued to overseas personnel by USDA, Commerce, State, and USTR; (2) describes how the agencies' past and present activities changed in response to the legislative restrictions on the

¹Although the Department of Justice is included in the legislated appropriations and is also subject to the tobacco-related restrictions, we did not examine its activities because it does not promote U.S. exports.

marketing of tobacco and tobacco products; and (3) identifies how the agencies monitor compliance with restrictions on promoting tobacco.

In conducting this review, we reviewed agency documents, performed legal analyses, and conducted interviews with responsible agency officials. We analyzed tobacco-related publications, including all FAS tobacco commodity reports for 2001 and 2002. We did not seek to determine whether ongoing agency activities are, or are not, prohibited under the appropriations restrictions. (See app. I for further details of our scope and methodology.)

Results in Brief

Commerce, State, and USTR have issued timely guidance implementing tobacco-related restrictions in their annual appropriations act, but the USDA's FAS has not. Since fiscal year 1998, USDA, Commerce, State, and USTR have issued guidance to diplomatic posts as a periodic cable that implements the restrictions in the agencies' appropriations. Between 1993 and 1997, FAS issued no guidance implementing its tobacco-related restrictions. Since 1998, FAS has relied on the periodic cables to provide policy guidance to its overseas personnel. However, this guidance—developed through an ongoing interagency process that includes FAS—does not provide specific direction to FAS staff. For example, it does not specify whether certain FAS activities, such as providing tobacco-related information reports on foreign market conditions and assisting in trade negotiations on tobacco-related issues, are consistent with its appropriations act's restrictions.

In response to the legislative restrictions, the agencies discontinued some tobacco-related activities and continued others. Commerce overseas staff ceased providing market research information to potential U.S. tobacco exporters. Consistent with the 1998 cable guidance, the staffs of both Commerce and State still provide routine business assistance to exporters needing security, customs, or regulatory information. In fiscal year 1994, FAS ended the tobacco component of USDA's major export programs—specifically, the Export Credit Guarantee Program, the Foreign Market Development Program, and the Market Access Program.² FAS has continued, as part of its commodity-reporting program, to gather and disseminate tobacco-related information that identifies foreign production and consumption rates, import trends, and changes in foreign regulations

²Formerly the Market Promotion Program.

that may assist tobacco exporters. Additionally, FAS, like other U.S. agencies, has provided USTR negotiators with information on foreign tariff rates, U.S. market shares, and trade concessions' potential impact on exports.

To monitor implementation of the legislated restrictions, Commerce, State, and FAS rely on their overseas staffs to identify U.S. firms' requests for tobacco-related assistance not covered in the periodic guidance. Overseas staff are instructed to refer such requests to headquarters for review, and headquarters staff make case-by-case determinations on the permissibility of each request. Overseas staff have asked, for instance, whether they can help U.S. tobacco firms address different types of potentially unfair trade practices and whether to list tobacco as an export prospect in publicly available country commercial guides that highlight export opportunities.

We are recommending that the Secretary of Agriculture (1) develop guidance to implement the legislative restrictions on promoting the sale or export of tobacco or tobacco products that fully reflects FAS programs and activities and (2) review FAS's ongoing activities to determine whether they are consistent with those restrictions.

In commenting on a draft of this report (see app. III), USDA disagreed with our finding that the guidance of the State cable does not fully implement FAS's tobacco-related prohibitions, but USDA noted that, in response to our recommendation, it will prepare separate guidance for FAS staff overseas and will cite any needed clarifications. USDA also disagreed with our recommendation that FAS assess its tobacco-related activities—specifically, the collection and dissemination of information on tobacco—to clarify whether these activities are consistent with FAS's legislative restrictions on the promotion of tobacco exports. USDA stated that it does not consider these activities to be within the scope of its restrictions. However, USDA has not provided us with any documentation in support of this position. Because FAS's mission is largely promotional, we maintain our recommendation that FAS review its ongoing activities and determine whether they are consistent with its restrictions. Commerce, State, and USTR did not comment on the draft report.

Background

In general, the overseas staffs of USDA, Commerce, and State help facilitate a broad range of U.S. exports. Specifically, USDA's FAS and Commerce work to improve export opportunities for U.S. products in foreign markets.³ Their activities include developing export opportunities for U.S. businesses, participating in trade agreement negotiations and countering foreign discriminatory trade practices, and collecting and analyzing statistics and market information. Each agency produces information reports on foreign market conditions. For example, FAS staff provide monthly reports on various commodities and annual reports on foreign markets, and Commerce overseas staff prepare country commercial guides that identify targeted industry sectors for U.S. exports and discuss the country's political, regulatory, and economic climate. State overseas staff's trade responsibilities include facilitating trade negotiations, providing economic analysis, and providing commercial assistance in countries where Commerce has no presence. These agencies are part of an interagency process established under the Trade Expansion Act of 1962, which provides for an interagency structure and process that consults and advises USTR on trade policy and negotiations.

In the early 1990s, these agencies, as well as the Departments of Health and Human Services (HHS) and the Treasury, were also members of an interagency group, called the Trade Policy Staff Committee Task Force on Tobacco Exports, that examined the dichotomy between tobacco-related health concerns and the economic benefit of tobacco exports.⁴ Charged with assessing U.S. tobacco policy in light of trade and health concerns, the group outlined the agencies' tobacco-related responsibilities.⁵ Those responsibilities included collecting and analyzing production, trade, and consumption data on tobacco and related products; addressing unfair regulations inconsistent with international trade agreements; combating discriminatory trade practices; and supporting foreign government health policies.

³In 2001, USDA had 244 staff in 73 overseas offices, and Commerce had 1,245 staff in 157 overseas offices. USDA has responsibility for marketing nonmanufactured agricultural products, while Commerce has responsibility for marketing manufactured agricultural and other products. In 2002, State had 6,103 staff located in 259 overseas offices.

⁴U.S. General Accounting Office, *Trade and Health Issues: Dichotomy Between U.S. Tobacco Export Policy and Antismoking Initiatives*, GAO/NSIAD-90-190 (Washington, D.C.: May 15, 1990).

⁵Members of the interagency group included representatives from the National Economic Council, State, Commerce, USDA, HHS, Treasury, and USTR.

In August 1992, Congress passed the Agricultural Appropriations Act for fiscal year 1993, prohibiting the use of appropriated funds to pay the salaries of personnel who carry out USDA's Market Promotion Program with respect to tobacco. In October 1993, Congress broadened the tobacco-related prohibition, as part of the fiscal year 1994 appropriation act, to include FAS in the prohibitions. Specifically, since fiscal year 1994 Congress has prohibited FAS from using appropriated funds to promote the sale or export of tobacco or tobacco products.

In November 1997, Congress passed the fiscal year 1998 Commerce, Justice, and State Appropriations Act, prohibiting agencies funded by the act, including USTR, from using appropriated funds to promote the sale or export of tobacco or tobacco products. This act also prohibited the use of appropriated funds to reduce or remove nondiscriminatory foreign country restrictions on the marketing of tobacco or tobacco products. The act allows the use of funds to address foreign-country, tobacco-marketing restrictions that discriminate against U.S. products. Subsequent appropriations acts have retained these prohibitions.

Commerce, State, and USTR Provided Guidance on Tobacco Restrictions, but FAS Did Not

Guidance implementing the fiscal year 1998 restrictions on Commerce, State, and USTR's promotion of tobacco and tobacco-related products was first issued in February 1998; about 3 months after the restrictions went into effect. The guidance, issued in a State cable to overseas posts, identified prohibited and permitted activities. By contrast, from 1994 through 1997, FAS did not provide any written guidance to its overseas staff regarding the restrictions on its tobacco-related activities. Since fiscal year 1998, according to FAS officials, the agency has participated in developing the guidance contained in the periodic State cables.

Commerce, State, and USTR Issued Guidance on Their Tobacco Restrictions

The cabled guidance, first issued in February 1998, implements the tobacco restrictions contained in the fiscal year 1998 Commerce, State, and Justice Appropriations Act. This guidance prohibits the agencies from

- promoting the sale or export of tobacco or tobacco-related products and assisting with the efforts of U.S. firms or individuals that do,
- participating in trade events or receptions sponsored by tobacco interests, and
- challenging host country laws and regulations directed toward reducing the negative impact of tobacco.

The guidance also clarifies the activities that overseas staff may engage in, specifically permitting these agencies to provide

- routine business facilitation services to all U.S. citizens or firms, such as providing information on foreign country conditions, policies, laws, and regulations;
- assistance in resolving business problems, such as customs or port clearances; and
- assistance in resolving potentially discriminatory trade restrictions.

Since February 1998, State has periodically updated and reissued this guidance to overseas staffs of State, Commerce, and USDA. The February 1999 cable reiterated the same guidance and encouraged overseas staff to refer to headquarters any issues not covered by the guidance. This cable also encouraged overseas posts to report on their actions supporting foreign-country, tobacco-control efforts. The February 2000 cable again encouraged posts to assist in foreign tobacco-control efforts and provided suggestions for doing so. The cable specifically recommended that posts help foreign governments to

- identify and promote tobacco-control programs;
- find funding for tobacco prevention and control projects, including from U.S. sources;
- report on the country's tobacco-control projects and progress; and
- track, and report on, tobacco-control legislation.

FAS Has Not Issued Guidance Implementing Its Tobacco Restrictions

FAS did not develop guidance implementing the statutory restrictions, effective in fiscal year 1994, that specifically prohibit it from using appropriated funds to promote the sale or export of tobacco or tobacco-related products. FAS did cease funding certain tobacco-related activities in 1994. However, FAS officials could not cite or produce any internal policy or guidance implementing their restrictions, nor could they explain what guidance they relied on from 1994 through 1997.

FAS officials stated that since fiscal year 1998, when the restrictions on State, Commerce, and USTR activities became effective, FAS has relied on the February 1998 and subsequent State cables containing guidance to

overseas posts as a means to inform its overseas staff of the tobacco-related restrictions. All of the FAS officials we interviewed were aware of this guidance. For example, FAS staff at headquarters and overseas were aware that they were prohibited from promoting tobacco and its products, and the overseas staff members we communicated with were aware that participation in trade events promoting tobacco and attendance at tobacco company-sponsored functions was prohibited.

Although FAS participated in drafting the original 1998 State-issued guidance cables, the cables do not specifically address what FAS activities are prohibited under the USDA appropriations act restrictions. In particular, the cables do not address FAS's continuing activities related to (1) collecting and disseminating information on foreign tobacco markets or (2) participating in negotiations on tobacco-related trade agreements.

Agencies Have Stopped Some Activities and Continued Others

USDA, Commerce, State, and USTR have altered their activities in response to the legislated tobacco restrictions by discontinuing the tobacco-related component of export programs and stopping direct assistance to tobacco exporters, but the agencies have continued certain other activities related to information gathering and dissemination and trade negotiations. For example, the agencies routinely collect and publish information on foreign countries' commercial environment, which may include information related to tobacco. Such information might be useful to U.S. tobacco exporters. These agencies also provide information useful to USTR when it negotiates trade agreements or addresses discriminatory trade barriers.

Commerce Stopped Providing Market Research Information

Commerce's Foreign Commercial Service (FCS) staff have ceased assistance to potential tobacco exporters but continue to provide basic assistance to all potential exporters. FCS representatives told us that FCS staff no longer (1) provide market information on tobacco in FCS's country commercial guides; (2) facilitate meetings with foreign tobacco buyers; (3) set up trade shows for tobacco products; or (4) provide customized fee-based research that identifies key competitors, the price of comparable products, customary distribution and promotion practices, or possible business partners. However, FCS identified a few instances in which its overseas staff inadvertently assisted tobacco exporters. In 2001, for example, FCS staff prepared research reports on Pakistan's tobacco market for a U.S. tobacco firm—an activity clearly prohibited in the guidance provided to overseas posts. FCS reminded its staff of these prohibitions in 2002 by resending the 2000 cable to its posts. FCS policy is

to limit assistance to tobacco firms to the same routine business facilitation services provided to any U.S. firm, such as briefing them on the security, political, and commercial situation in a country and helping them resolve customs or tax issues. Commerce staff, in conjunction with other agency staff here and abroad, also helps resolve potential discriminatory trade practices.

Commerce, State, and USTR Provide Trade Agreement-Related Support

Commerce, State, and other federal agencies assist USTR by providing trade information on foreign markets, commodities, or barriers to trade, and they work together to assist exporters faced with potential discriminatory trade practices. In 2001, for example, representatives from USTR, State, Commerce, and the Centers for Disease Control and Prevention negotiated with the Republic of Korea to reduce proposed import tariffs on tobacco that would have violated an existing market access agreement between the United States and Korea. In another instance, U.S. agencies worked together to address Thailand's proposed cigarette ingredient disclosure requirement—a potential infringement of the intellectual property rights of U.S. cigarette brands. U.S. agencies assist exporters in other ways, such as working with foreign governments to address cigarette counterfeiting, as U.S. agencies did in Pakistan in 1998.

USTR is responsible for developing and coordinating trade policy, negotiating trade agreements, and addressing unfair trade practices. USTR relies on an interagency structure, established in the Trade Expansion Act of 1962,⁶ to provide information on foreign trade policies, regulations, and practices. Since 1998, the Commerce, Justice, and State Appropriations Act has specifically allowed the use of appropriated funds to address foreign-country, tobacco-marketing restrictions that discriminate against U.S. products. This allowance is reflected in the implementing guidance contained in the periodic State cable.

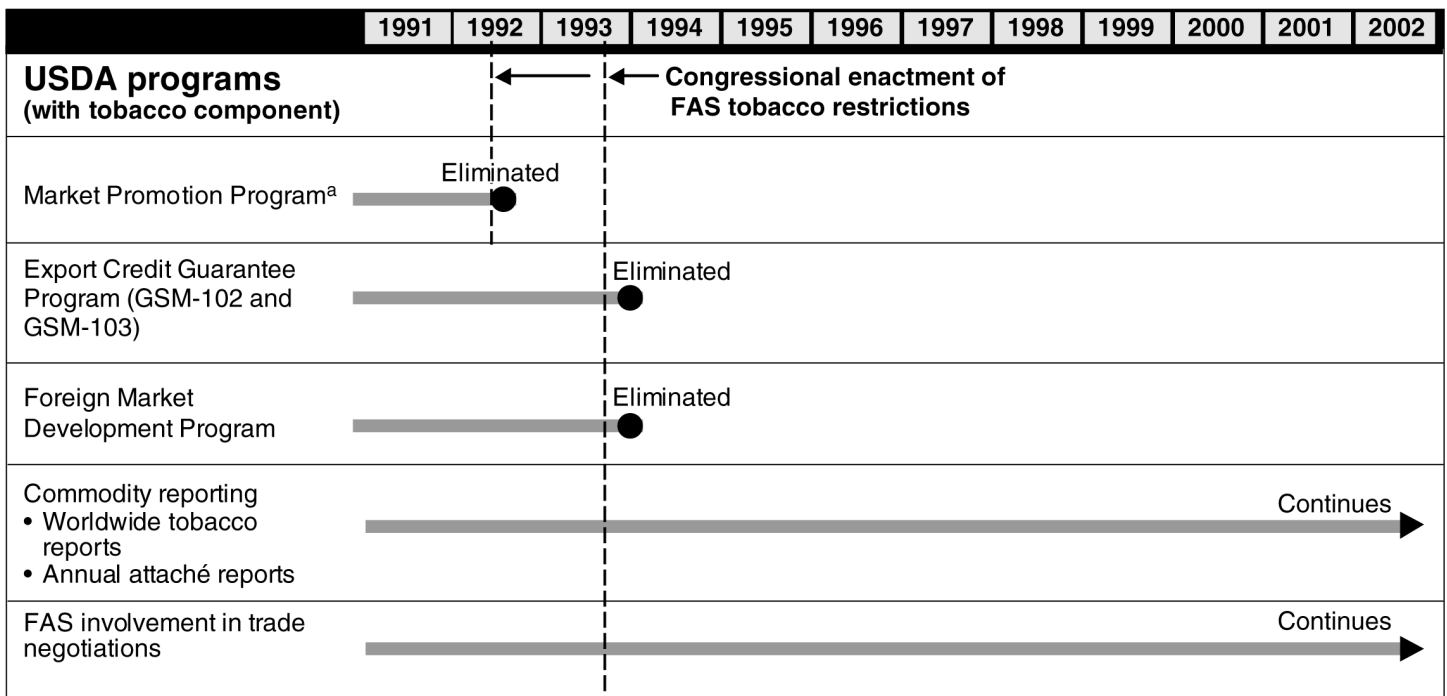
FAS Discontinued Some Tobacco Programs

Beginning in fiscal year 1994, when the tobacco restrictions contained in USDA's appropriations went into effect, FAS ceased funding the tobacco component of USDA's export programs (see fig. 1). The tobacco component of USDA's Export Credit Guarantee Program had provided U.S. tobacco exporters with guaranteed credit to facilitate U.S. tobacco

⁶Public Law 100-418.

exports and had provided subsidy payments that allowed the tobacco exporters to compete in world markets against the subsidized exports of other countries. USDA also stopped funding the tobacco component of the Foreign Market Development Program, which was designed to encourage commercial exports through federal subsidies for advertising, trade servicing, and technical assistance. The tobacco component of the Market Access Program (formerly the Market Promotion Program) ended in fiscal year 1993. This program funded the promotional activities of U.S. tobacco producers, exporters, private companies, and trade organizations.

Figure 1: FAS Tobacco-Related Programs and Activities



Source: GAO.

^aNow the Market Access Program.

FAS Continues to Report on Foreign Tobacco Markets

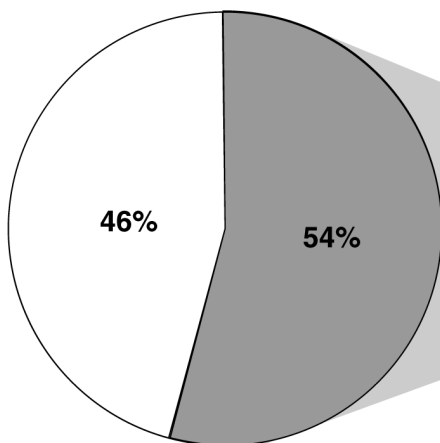
FAS continues to produce tobacco-related reports that can be useful to tobacco exporters. Historically, FAS has reported on foreign-country tobacco imports and provided production, pricing, and consumption data, as it routinely does for other commodities. Currently, FAS continues to put monthly tobacco trade statistics on its Internet Web site, and it publishes printed copies of its quarterly report *Tobacco: Worldwide Markets and*

Trade. (FAS officials said that they would stop publishing the report at the end of 2003 but that the information would continue to be available on their Web site.) FAS also makes available on the Internet annual commodity reports on tobacco, referred to as “attaché reports.”⁷ These reports contain numerous data tables and some evaluative information on major foreign consumers and producers of tobacco products.

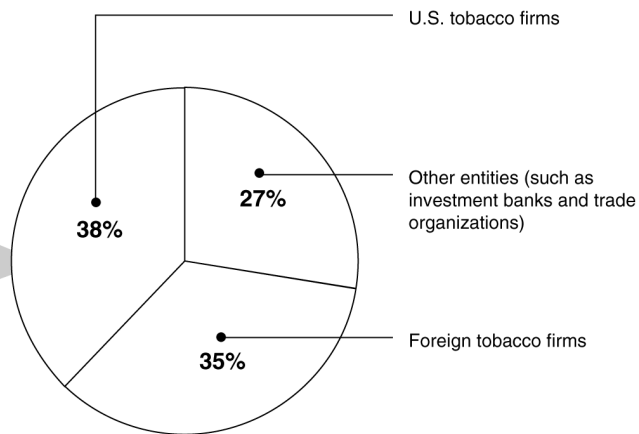
We examined the subscription lists for FAS’s quarterly reports and found that the majority of subscribers are tobacco industry-related organizations such as U.S. and foreign tobacco firms and tobacco-related organizations such as investment banks, trade associations, and tobacco control organizations (see fig. 2).

Figure 2: Subscribers to FAS Worldwide Tobacco Reports

Subscribers to FAS worldwide tobacco report



Tobacco industry-related subscribers



Not tobacco industry-related
 Tobacco industry-related

Sources: GAO and USDA.

⁷FAS attaché reports are issued on numerous commodities.

We also analyzed the content of all FAS annual attaché reports covering tobacco during 2001 and 2002 and found that they provide information on foreign market conditions that may be useful to tobacco exporters. The 62 annual reports from 2001 and 2002⁸ that we analyzed commonly contained discussions on marketing, consumption and production, trade issues, and policies. (See app. II for detailed information on the nature of these reports.) General FAS guidance on commodity reporting encourages posts to view the countries as markets for U.S. exports and competitors to U.S. products, and the attaché reports identified import and export trends. Each report narrative was supplemented with an average of 14 tables, including estimates on projected production and consumption of leaf tobacco and cigarettes. Additionally, some reports contained information on health and safety policies, market share, advertising regulations, and brand or tobacco preference. The following excerpts from selected reports illustrate the kind of information that might be useful to U.S. tobacco exporters.

- Malaysia, 2002: “Younger Malaysians prefer to smoke American-blended cigarettes. With about half of the population below age 25, the demand for these cigarettes should continue to climb. The local market share for American-blend cigarettes has expanded from 38 percent in 1998 to 45 percent in 2001.”
- Italy, 2002: “Prospects for U.S. tobacco into the Italian market...are unfavorable, in view of both the continued reduction of domestic brand cigarettes sold on the Italian market, and stronger competition from other suppliers, such as Brazil and Zimbabwe.”
- Dominican Republic, 2002: “The Dominican Republic continues to be one of the most important trading partners with the United States in tobacco.... U.S. exports to the Dominican Republic surpassed US\$85

⁸Attaché reports for 2002 cover Argentina, Brazil, Bulgaria, China, Croatia, Dominican Republic, Egypt, France, Germany, Greece, Guatemala, Hong Kong, Hungary, India, Indonesia, Italy, Japan, Korea, Malaysia, Mexico, the Netherlands, Pakistan, the Philippines, Poland, the Russian Federation, Spain, South Africa, Taiwan, Thailand, Turkey, and the United Kingdom. The European Union annual report was not included.

Attaché reports for 2001 cover Argentina, Austria, Brazil, Bulgaria, China, Egypt, France, Germany, Guatemala, Hong Kong, Hungary, India, Indonesia, Italy, Japan, Korea, Malaysia, Mexico, Moldova, the Netherlands, Pakistan, the Philippines, Poland, the Russian Federation, South Africa, Spain, Taiwan, Thailand, Turkey, the United Kingdom, and Zimbabwe.

million in CY 2001, positioning the Dominican Republic among the top five largest importers of U.S. tobacco.”

Moreover, an analysis of report narratives in combination with information contained in the data tables might provide insight into market niches for potential exporters. For example, from the narratives and tables of the FAS 2002 report on Taiwan, we learned that (1) domestic unmanufactured tobacco production had declined because of privatization of the country’s tobacco monopoly, and the remaining production will incorporate U.S. leaf tobacco; (2) competitors’ imports of unmanufactured tobacco were projected to decrease; (3) Taiwanese consumers considered U.S. tobacco desirable; and (4) small, steady increases in total tobacco consumption were forecast. Taken together, this information identifies an opportunity for U.S. tobacco exporters of unmanufactured leaf. The report itself claims that in Taiwan there are “opportunities and challenges for U.S. tobacco and tobacco product exports.”⁹

The 2001 report from the Netherlands is another example in which combined reported information gives U.S. tobacco exporters insight into the Dutch market.¹⁰ The tobacco report indicates (1) increased domestic production of cigarettes, (2) a Dutch preference for U.S. flue-cured unmanufactured tobacco, and (3) the importance of competitive pricing for U.S. exports to be able to compete with imports from Brazil and Zimbabwe. Additionally, information on the European Union’s lower tar and nicotine requirements provides the exporter with useful information.

FAS Continues to Provide Tobacco-Related Information to USTR

FAS supports USTR and State regarding trade policy and trade agreement issues. FAS staff participate in the interagency process that supports trade negotiations and addresses discriminatory trade practices, providing data and analysis on a variety of commodities, including tobacco. The Secretary of Agriculture, under the Food, Agriculture, Conservation, and Trade Act of 1990,¹¹ has authority to “provide technical services to the USTR on matters pertaining to agricultural trade and with respect to international negotiations on issues related to agricultural trade.” FAS, for example, has

⁹Foreign Agricultural Service, *Taiwan Tobacco and Products*, number TW2020, June 3, 2002.

¹⁰Foreign Agricultural Service, *The Netherlands Tobacco and Products*, number NL1055, August 10, 2001.

¹¹Public Law 101-624.

supported USTR's efforts to foster free trade agreements with Australia, Chile, Jordan, Morocco, and Singapore by providing tobacco-related data and information on production, supply and demand, and tariff-rate quotas.

Agencies Rely on Staff to Monitor Compliance with Restrictions on Promoting Tobacco

Senior FAS and FCS officers at overseas posts oversee their staffs' tobacco-related activities. Overseas staff are aware that they are to refer to these officers any requests for assistance or other activities that could violate the restrictions outlined in the periodic guidance they receive. When clarification of a requested activity is required, these officers, as outlined in the periodic State cables, seek headquarters-level approval before assisting U.S. tobacco firms. Headquarters staff make case-by-case determinations on the permissibility of each request. Agencies do not systematically collect information on requests made for assistance by tobacco exporters; therefore, information on the exact number of requests was unavailable. However, overseas staff have, for example, asked whether they should discuss proposed tariff increases on imported cigarettes with foreign governments, whether it would be appropriate to hold embassy meetings with tobacco firms, and whether to include tobacco as a good export prospect in Commerce's Country Commercial Guide for Russia. To each of these requests, headquarters staff said no.

Conclusions

Since 1998, USDA, Commerce, State, and USTR have participated in an interagency process that has developed and periodically updated guidance to their overseas staff, outlining restrictions on the promotion of tobacco and tobacco-related products. However, this guidance appears to implement only the restrictions of the Commerce, State, and USTR appropriations and does not provide specific direction to FAS staff regarding restrictions on its tobacco-related programs and activities. FAS discontinued funding the tobacco components of its major export programs in 1994. However, FAS has not assessed whether its activities regarding the collection and dissemination of information—information that is used by tobacco producers and exporters of tobacco products—are consistent with FAS's statutory restrictions on the promotion of tobacco or tobacco products.

Recommendations

To ensure that the Foreign Agricultural Service has fully addressed its restriction on the promotion of tobacco or tobacco-related products, we recommend that the Secretary of Agriculture (1) develop guidance to implement the legislative restrictions on promoting the sale or export of tobacco or tobacco-related products that fully reflects FAS programs and

activities. We also recommend that the Secretary (2) review all ongoing activities that pertain to tobacco or tobacco-related products—specifically, the collection and dissemination of information on tobacco—to determine whether these activities are consistent with the Department of Agriculture’s restrictions in its appropriations.

Agency Comments and Our Evaluation

We provided a draft copy of this report to USDA, Commerce, State, and USTR. We received written comments from USDA. Commerce, State, and USTR did not comment on the draft report.

USDA disagreed with our conclusion that the State cable, formulated to implement the restrictions that apply to Commerce, State, and USTR and adopted by FAS, provides insufficient guidance to FAS staff. Specifically, FAS claims that the Commerce, Justice and State Appropriations Act restricts agency action to a greater degree than the USDA amendment covering FAS because it adds an additional restriction on trade negotiations not found in the USDA amendment. By following this guidance, FAS states, it is therefore implementing its restrictions and voluntarily adopting additional limitations.

We disagree. The tobacco-related restrictions contained in FAS’s annual appropriation act and the restrictions contained in Commerce, State, and USTR’s appropriation act are essentially the same and only differ in one respect. The restriction in the Commerce, State, and USTR appropriation act prohibits those agencies from seeking the reduction or removal of foreign-country restrictions on the marketing of tobacco, but allows those agencies to address, in limited circumstances, foreign-country restrictions on the marketing of tobacco that potentially discriminate against U.S. products. Because FAS programs and activities differ from those of the other agencies and its overall mission is largely promotional,¹² we continue to recommend that FAS develop guidance that fully reflects its own activities.

FAS also disagreed with our recommendation that it review its tobacco-related activities—specifically, the collection and dissemination of market intelligence regarding tobacco—to determine whether these activities are in keeping with USDA’s tobacco restrictions. FAS states that it does not consider market intelligence reporting (the collection and dissemination of information on tobacco) to be within the scope of their amendment’s

¹²7 U.S.C. §1761-1768.

restrictions. It states that the legislative history does not address this activity and that an interagency task force considered it to be outside the amendment's scope. During the course of our review, we asked FAS for, but did not receive, documentation that supports their contention that such reporting falls outside the scope of the restrictions.

In recommending the need for such a review of current tobacco-related activities, we note that FAS's overall mission is to promote the export of U.S. agricultural products—and one of the primary responsibilities of the FAS officers overseas is market development.¹³ The attaché reports we examined identify (1) changes in domestic production or consumption that could affect tobacco leaf or cigarette sales; (2) foreign competitors, characterizing the competitiveness of their products; and (3) potential market impediments, such as regulations or duties. Some reports also make suggestions on commodity pricing that could increase U.S. firms' sales over foreign competitors' and help U.S. firms market their tobacco and tobacco products overseas. USDA does not permit FAS officers overseas to discuss or provide this type of information with potential exporters. We would expect FAS to assess its market intelligence reports by the same standards.

In addition, FAS stated that the USDA amendment is a limitation on the use of FAS's Salaries and Expenses appropriations, and not, as represented in our draft report, "a general restriction on the Department of Agriculture's tobacco-related activities." Nowhere in our report do we state that the USDA amendment constitutes such a general restriction. In this report's highlight sheet, we do summarize that "Since 1994, the Agriculture Appropriations Act has prohibited the funding of tobacco export programs and restricted the Department of Agriculture's tobacco-related activities." We believe this latter statement accurately summarizes the amendments provisions as reflected in the statement made throughout this report that the USDA amendment prohibits FAS, which is responsible for USDA's agricultural export promotion programs and activities, from using appropriated funds to promote the sale or export of tobacco or tobacco-related products.

FAS also stated that a review of the USDA amendment's legislative history demonstrates that tobacco interests' participation in "FAS sponsored trade shows and other promotional activities" were the type of activities that

¹³7 U.S.C. §5693.

were encompassed by the prohibition. We do not contest FAS's interpretation of the of the legislation. As FAS correctly points out in its comments, we did not seek to determine whether ongoing agency activities are, or are not, prohibited. However, FAS assertions regarding the types of activities demonstrated by the legislative history to be encompassed by the prohibition beg the question of what FAS means by "...promotional activities." This underscores our point regarding the need for FAS-specific guidance for implementing the prohibition.

As you requested, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the appropriate congressional committees. Copies of this report will also be sent to the Secretary of Agriculture, the Secretary of Commerce, the Secretary of State, and the U.S. Trade Representative. Copies will also be made available to others on request. In addition, the report will be available at no additional charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions regarding this report, please call me at (202) 512-3149. Key contributors to this assignment were Virginia Hughes, Patricia Martin, Ella Mann, Ernie E. Jackson, Reid Lowe, and Daniel Gage.

A handwritten signature in black ink that reads "David Gootnick". The signature is written in a cursive style with a large, looping initial "D".

David Gootnick
Director, International Affairs and Trade



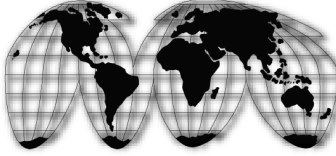
Appendix I: Scope and Methodology

To assess the tobacco-related policy guidance on tobacco restrictions issued to overseas personnel by the Departments of Agriculture (USDA), Commerce, and State and the Office of the U.S. Trade Representative (USTR), we obtained and analyzed copies of the legislation governing the agencies' tobacco-related restrictions. We also analyzed, when available, State cables containing guidance implementing the restrictions contained in the laws, as well as reports and E-mails detailing the development or provision of guidance to the overseas staffs of these agencies. We discussed the process for establishing the evolution and implementation of the guidance with cognizant officials of these agencies. However, we found few officials remained at the agencies from the time of the legislation. Although the Department of Justice is included in the legislated appropriations and is also subject to the tobacco-related restrictions, we did not examine its activities because it does not promote U.S. exports.



To determine how USDA, Commerce, State, and USTR adjusted their activities in response to their legislative restrictions on the marketing of tobacco and tobacco products, we identified these agencies' past tobacco export promotion programs and current activities related to tobacco. However, we did not seek to determine whether the agencies' ongoing activities are prohibited. We obtained funding histories for USDA's tobacco programs and discussed the nature of the programs and activities with agencies' officials here and abroad, obtaining documentation when available. We communicated with USDA's Foreign Agricultural Service (FAS) and Commerce's Foreign Commercial Service (FCS) staffs in Croatia, Italy, Turkey, and the Philippines. We also obtained information on trade agreements and discussed the interagency process used to develop trade policy and negotiating positions. In addition, we contacted officials of antitobacco organizations, such as the American Cancer Society and Campaign for Tobacco Free Kids, and asked them to identify federal tobacco export promotion programs.

We conducted our review from October 2002 to March 2003 in accordance with generally accepted government auditing standards.

Appendix II: Excerpts from 2001 and 2002 Foreign Agricultural Service Tobacco Attaché Reports

Report section	Excerpts characterizing and illustrating statements in the 62 tobacco reports
<p>Marketing</p> <p>Highlights regarding the size of the market, distribution chains, and change from previous year in preference, and the U.S. competitive position.</p> 	<p>Austria 2001 - No opportunities: "Since sales can only be made through AT [Austria Tabak], which is interested in promoting its own brands, there are no market development opportunities for cigarettes imported from the U.S."</p> <p>Russia 2002 - Importance of distribution: "The largest producers create marketing and distribution chains for their own brands, and although the number of distributors increased..., distribution of major brands on the Russian market was made a focus of the tobacco giants."</p> <p>Korea 2002 - Age and price factors: "Older smokers are prime consumers of the cheaper local brand cigarettes and a substantial increase in price would play a significant role in their buying decision. Younger smokers, on the other hand, tend to be more-image conscious and less swayed by taxes applied on more expensive products."</p> <p>Spain 2002 - Reductions forecasted: "Cut backs in manufacturing of American blend types of cigarettes under license are expected to reduce tobacco imports sourced from the United States during 2002 to 11,200 metric tons, 2,200 metric tons less than in the preceding year. Further reductions are expected for the future."</p>
<p>Policy</p> <p>Elements that affect production, trade, and marketing, also incorporated into other report sections.</p> 	<p>Zimbabwe 2001 - Insignificant anti-smoking policy: "GOZ [Government of Zimbabwe] does not discourage the production of tobacco products and the anti-smoking campaign is very low key."</p> <p>Turkey 2002 - Customs duty: "Tobacco imports are subject to a 25 percent customs duty, plus a US\$3 per kg tobacco import fund charge."</p> <p>United Kingdom 2002 - Tax and EU policies: "The UK government has made reducing the incidence of smoking a key health objective. In addition to its policy of high taxes, it has supported wholeheartedly various EU directives to curb smoking."</p> <p>Mexico 2002 - Importance of pricing: "It is expected that the future Mexican market conditions will largely be dictated by price sensitivity."</p>
<p>Trade</p> <p>Aspects of market trends and prospects, including competition, tariffs and other barriers, and changes in safety or health standards.</p> 	<p>China 2001 - Future opportunities/challenges: "China recently lifted its 11 year ban on imports of U.S. leaf tobacco.... At least one major Chinese manufacturer has already expressed its interest in importing U.S. flue-cured tobacco. Post's forecast for 2001 imports of U.S. tobacco anticipates mostly trial shipments. U.S. companies planning to export tobacco to China should also be aware of the extremely complex import licensing procedures...."</p> <p>Dominican Republic 2002 - Top trade partner: "The Dominican Republic continues to be one of the most important trading partners with the United States in tobacco.... U.S. exports to the Dominican Republic surpassed US\$85 million in CY 2001, positioning the Dominican Republic among the top five largest importers of U.S. tobacco."</p> <p>Taiwan 2002 - Essential competitor to competition: "U.S. flue-cured is forecast to have a 50 percent import share. Because U.S. tobacco is considered an essential ingredient of TTWB [Taiwan Tobacco and Wine Board] cigarette formulations, U.S. tobacco is competitive with tobacco imported from other countries."</p>

**Appendix II: Excerpts from 2001 and 2002
Foreign Agricultural Service Tobacco Attaché
Reports**

Report section	Excerpts characterizing and illustrating statements in the 62 tobacco reports
<p>Production</p> <p>Highlights regarding domestic yield, new investments, and price or subsidy policies.</p> 	<p>Guatemala 2001 - Improved planting mechanism: "A trend in production for most tobacco farmers, is a planting system called "pilon." This system is a new way to plant tobacco with better return rates and higher yields, compared to direct seed planting."</p> <p>South Africa 2002 - Forecast declining yields: "The 2001 crop showed a major increase over the disappointing 2000 crop but indications are that the 2002 crop will continue the long term decline."</p> <p>Hong Kong 2002 - Essential import need: "Hong Kong entirely relies on imports for raw materials. Flue-cured tobacco leaves, which are major raw materials for local cigarette production, are imported from various countries like the U.S., China, South Africa, Canada, and Zimbabwe."</p> <p>Philippines 2002 - Forecast increasing yields: "Total tobacco production for 2002 is expected to increase by 10.2 percent from the previous year's level due to favorable weather conditions and financial assistance programs extended by the NTA [National Tobacco Administration] to tobacco farmers."</p>
<p>Consumption</p> <p>Developments in regarding market patterns, specifically regarding tobacco products, manufacturers, and retail demand.</p> 	<p>The Netherlands 2001 - Number of female consumers: "In the Netherlands, one third of women (31.2 percent) and 40.9 percent of men smoke, according to the Dutch Social and Cultural Plan Bureau. In Europe, only Danish women (36 percent) and Spanish men (43 percent) smoke more than the Dutch."</p> <p>Malaysia 2002 - Youth factor and preference: "The outlook for cigarette consumption is brighter in this current year.... Younger Malaysians prefer to smoke American-blended cigarettes. With about half of the population below age 25, the demand for these cigarettes should continue to climb."</p> <p>Germany 2002 - Data on "sheet" tobacco: "German raw tobacco consumption including homogenized sheet tobacco in 2001 is roughly calculated at 178,000 MT, of which the cigarette industry consumes about 150,000 MT (the tobacco use per cigarette is calculated at 0.7 grams)."</p> <p>Argentina 2002 - Forecast on declining consumption: "Total domestic use of tobacco for MY2002 is forecast at 31,300 MT, slightly lower than in the previous year. Due to the economic recession and economic crisis, cigarette consumption is falling (7 percent in 2001 and 3.7 percent in the first three months of 2002)."</p>

Sources: GAO, USDA, Nova Development Corp. Art Explosion.

Appendix III: Comments from the U.S. Department of Agriculture



United States
Department of
Agriculture

Foreign
Agricultural
Service

Washington, D.C.
20250

MAY 14 2003

Mr. David B. Gootnick
Director, International Relations and Trade
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Gootnick:

Thank you for the opportunity to respond to the General Accounting Office's (GAO) draft report #03-618 entitled "USDA's Foreign Agricultural Service Has Not Fully Addressed Congressional Restrictions on Promoting Tobacco."

While we welcome the opportunity to review the Foreign Agricultural Service's (FAS) compliance with the annual restrictions on promoting the sale and export of tobacco, we find that the report does not present a balanced or accurate representation of FAS' responsibilities and actions in this area. It is important to note that during the exit interview, the GAO auditors stated that there were "no clear instances where FAS was clearly in violation of the amendment." In addition, the report states, "we (GAO) did not seek to determine whether ongoing agency activities are, or are not prohibited." The report concluded only that FAS should (1) develop guidelines that reflect FAS's specific restrictions, and (2) review tobacco-related activities to determine whether they are consistent with the restrictions. However, the report implies that FAS has been remiss in carrying out its responsibilities.

The facts of the matter are these:

The Durbin amendment is a limitation on the use of FAS' Salaries and Expenses appropriation. It is not generally a restriction on "the Department of Agriculture's tobacco-related activities" as represented in the report. As such, it prohibits the use of these funds "to promote the sale or export of tobacco or tobacco products." In response to this, as well as other applicable legislation, as the report notes, FAS ended funding for the MPP and FMD promotion programs for tobacco, and terminated the GSM credit programs for tobacco. In addition, FAS precludes tobacco interests' participation in FAS sponsored trade shows and any other promotional activities. These activities are within the scope of the prohibitions in the Durbin amendment because they would promote the sale or export of tobacco. We suggest that a review of the legislative history of this provision demonstrates that it was these types of activities that were encompassed by the prohibition.

Nevertheless, FAS did not stop there. It went further than legally required by adopting the strictures of the State Department cables, which implemented the Doggett

Mr. David B. Gootnick
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amendment. The Trade Policy Staff Committee (TPSC) established the Task Force on Tobacco Exports in December 1993, before the passage of the Durbin amendment. USTR and HHS chaired the Task Force. The Task Force reviewed U.S. activities and policy in light of trade considerations; economic and health concerns; and current laws, regulations and international agreements. With the enactment of the Doggett amendment, the interagency task force drafted, in the form of an initial State Department cable, guidance encompassing a full range of governmental activities. USDA/FAS was a full and active member in the task force. FAS relies on this cable because it is comprehensive and because it applies to all diplomatic and consular posts, which includes FAS Counselors and Attaches.

The report language leaves the impression that the State Department cable is insufficient in providing guidance to FAS staff. We strongly disagree with this conclusion. Although that cable does not specifically cite the Durbin amendment, its contents cover and ensure compliance by FAS with both the Durbin and Doggett amendments. This is apparent for two reasons. First, contrary to the interpretation in the GAO report, the Doggett amendment is more restrictive on agency action than the Durbin amendment. The Doggett amendment, which addresses State Department, Justice and related agencies, contains a prohibition on promoting the sale or export of tobacco that is identical to the Durbin amendment but then adds an additional restriction on trade negotiations that is not found in the Durbin amendment. By following the guidance of the State cable, FAS is, therefore, implementing the Durbin amendment and voluntarily adopting additional limitations. Secondly, we point out that the State cable clearly addresses the prohibition on promoting the sale or export of tobacco that is part of both the Durbin and Doggett amendments. See, for example, paragraphs 3 and 4 of State 27439.

The GAO report is also critical of FAS for not specifically identifying FAS activities that are prohibited under the FAS appropriations restriction. As stated above, we have ceased funding for tobacco in all our export promotion programs. It would be impossible to speculate on the varied types of miscellaneous post contacts with U.S. and foreign business interests that might arise. Therefore, we believe it is better to rely upon the broad admonishments in the State cables and to also provide clear instructions to overseas personnel to contact Washington if there are any questions concerning implementation of the restrictions.

The GAO report leaves the impression that market intelligence reporting is prohibited even though in the introduction to the report GAO states, "we (GAO) did not seek to determine whether ongoing agency activities are, or are not prohibited." Market intelligence reporting was not directly addressed by either amendment. The legislative history does not address this activity. An interagency task force considered it to be outside of the scope of both of the amendments. FAS does not consider it to be within the scope of either amendment. The Report states, "tobacco-related reports can be

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Page 3

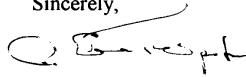
useful to tobacco exporters." Market intelligence reporting is outside the scope of the legislation precisely because it is not promotion. These reports are used by numerous entities to perform in some cases Congressionally mandated activities. The data generated by these reports is used for many purposes and by many organizations including the World Health Organization, various parts of the United Nations, the Pan American Health Organization, the Centers for Disease Control, USDA domestic program agencies, universities, banking institutions, publishing businesses and the tobacco industry. The fact that the tobacco industry probably pays especially close attention to and possibly makes use of reports by the Food and Drug Administration (FDA) does not mean that the data reported by the FDA is promoting tobacco and tobacco products. Similarly, the mere fact of the tobacco industry's interest in FAS market intelligence reports does not mean that the USDA is using resources to promote the industry's products. With the elimination of promotion programs, FAS also ended reporting on these programs from overseas posts.

Recommendations contained in the report:

With respect to the first GAO recommendation, although FAS has provided guidance to its overseas personnel through the State cables, we will prepare a separate FAS cable, repeat the substance of the State cables, cite the Durbin amendment and provide any needed clarifications. FAS will address the cable directly to FAS staff to ensure that it receives due attention.

With respect to the second recommendation, FAS has and will continue to review tobacco related activities to ensure that they remain consistent with legislative restrictions and will direct overseas staff, through the FAS cable, to request from Washington directions when a situation is not clear. The report notes that this is already happening.

Sincerely,



A. Ellen Terpstra
Administrator

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