

## USAID POLICY DETERMINATION - 20

### U.S. PROGRAMS AND U.S. JOBS

#### I. BACKGROUND

Section 599 of P.L. 102-391 prohibited the use of FY 1993 appropriated funds for financial incentives to U.S. enterprises to relocate abroad, or for establishing or developing export processing zones, if such activities were likely to result in the loss of jobs in the United States. It also prohibited use of funds for assistance which would contribute to violations of internationally recognized workers' rights. Section 547 of P.L. 103-87 continued this prohibition for FY 1994, except that subsection (c) was modified to exempt the informal sector, micro and small-scale enterprises, and smallholder agriculture.

These final Agency guidelines expand the application of sections 599 and 547 to all Agency funds (including local currency generated through foreign assistance activities), regardless of the year appropriated. It is Agency and Administration policy that no assistance be provided if it is likely to result in the loss of jobs in the United States.

The guidelines are divided into six parts: Background, Policy Context, General Principles, and specific guidance for the application of each of the three subsections of the statutory provisions. The guidance incorporates and expands on the statutory requirements. The text of the 1994 legislation is attached as Appendix A. Standard clauses for inclusion in grants, inter-agency agreements, and contracts are attached as Appendix B. Examples of certifications, resolutions, clauses, etc. are attached as Appendix C.

#### II. POLICY CONTEXT

Section 547 of P.L. 103-87 prohibits the use of appropriated funds for a number of activities related to investment promotion. The associated legislative history recognizes that such prohibitions are made in the context of a consistent postwar policy to support foreign direct investment by U.S. firms based on the link that such investment has with growing economies abroad, more U.S. exports, and more American jobs.

Section 601(a) of the Foreign Assistance Act states the policy of the United States "to encourage the contribution of United States enterprise toward the economic strength of less developed friendly countries through private trade and investment abroad." Section

601(b) instructs the executive branch to "make arrangements to find, and draw the attention of private enterprise to, opportunities for investment and development in less developed countries and areas."

The mandate contained in Section 601 of the Foreign Assistance Act to encourage private U.S. investment abroad is not unconditional. The legislative history of Section 547 draws a distinction between promoting U.S. foreign investment and persuading U.S. firms to relocate abroad, particularly when such relocation results in a reduction of existing U.S. jobs owing to the replacement of existing U.S. production with production abroad.

This concern is shared by USAID. Administrator Atwood stated in his testimony before the House Committee on Foreign Affairs on May 12, 1993: "We feel very strongly that we should not be exporting American jobs. We ought to be exporting American goods." He laid out a proactive role for USAID in creating demand for American exports and supporting American jobs: "Exports to the developing world have been the largest and fastest growing sector of our GNP. If we can manage to encourage the development of free markets in these areas, then we are going to create opportunities for American businesses to sell their products in these areas of the world."

The Agency is also committed to implementing Agency programs and activities in a manner consistent with internationally recognized worker rights and related U.S. law, regardless of the year in which funds are appropriated. The legislative history of Section 502(a)(4) of the Trade Act of 1974 states that the underlying intent in promoting the internationally recognized rights of workers is to ensure that the broadest sectors of the population benefit from trade and development. The capacity to form free labor unions and to bargain collectively to achieve higher wages and better working conditions is essential for workers in developing countries to attain decent living standards and to overcome hunger. Congress has also expressed concern that "the lack of basic rights for workers in many less developed countries is a powerful inducement for capital flight and overseas production by U.S. industries."

The legislative history accompanying Section 502(a)(4) of the Trade Act of 1974 states that Congress recognizes that workers' rights should be interpreted commensurate with the development level of the particular country. In particular, it recognizes that the prevailing labor standards in the United States and other highly industrialized developed countries may not be appropriate in some developing countries, and paragraphs (d) and (e) of Section 502(a)(4) permits some flexibility in that regard.

### III. GENERAL PRINCIPLES

A. Application. Section 599 applies to activities financed with dollars appropriated in Fiscal Year 1993. Section 547 applies to FY 1994 appropriated funds. As a matter of policy, USAID is extending the application of the legislation to all projects\* financed with appropriated dollars -- prior year funds as well as funds from FY 1993 and 1994 forward -- and to all projectized local currency funds, including those generated through P.L. 480

programs.

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\*For purposes of this guidance, the term projects shall include certain Commodity Import Programs (C.I.P.s) when (1) project-like commodities such as processing plants and equipment are financed, and (2) the U.S. supplier of such commodities and the foreign importer disclose that they currently have, or plan to establish, ownership interest in one another or a joint venture.

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B. On-going Activities. On-going activities should be reviewed for compliance with these final guidelines. Proscribed activities funded with either FY 1993 or FY 1994 funds must be terminated immediately. Dollar-funded projects from earlier fiscal years, which do not comply either in whole or in part with the restrictions included in Section 547, as defined by this guidance, must be redesigned or terminated within 30 days of the effective date of these guidelines. Exceptions to this termination date may be approved only by the Administrator, and in no case will an extension of activities be permitted beyond 120 days of the effective date of these guidelines. The cost that may result from ensuring compliance with this provision should be taken into account in a Mission's or Bureau's decision of whether to redesign or terminate an on-going activity. On-going local currency activities should also be brought into compliance with these guidelines.

C. Statutory Checklist. Compliance with these guidelines must be verified at the time of project authorization; the statutory checklist has been modified accordingly. Handbook 3, Appendix 5C(2), Assistance Checklist, contains the relevant materials.

D. Grants and Inter-Agency Agreements. Standard clauses incorporating these guidelines are to be included in all HB3, HB13, and Inter-Agency agreements. These standard clauses, which will be incorporated into the appropriate handbooks, are contained in the Appendix B to this guidance. The clauses should also be included in subgrants.

Exceptions from the requirement to include in a Project Agreement the standard provisions of PD-20 must be authorized by the responsible Assistant Administrator in consultation with PPC and GC. The Administrator of USAID must in all cases be notified of proposed exceptions prior to their authorization. An exception to the standard provisions requirements of PD-20 shall be based on the AA's determination that the relevant provisions have been or will be included in project implementation letters or comparable subsidiary documents that will address any potential for violation of relevant legislation. Whenever such an exception is made, the pertinent office must ensure that the appropriate file or files contain a written record, in copies of telegrams, or otherwise, which reflect the basis of the exception.

Authorization of exceptions should not be construed as lessening the intent of USAID to fully implement both the spirit and letter of PD-20 or of relevant underlying legislation.

Implementation and monitoring of project activities for compliance with the requirements of PD-20 and its underlying legislation remain with the Mission and the Bureau throughout the life of project.

E. Agreements with International Organizations. These guidelines apply to funds transferred to international organizations for implementation of project activities. In most cases, therefore, the standard clauses contained in Appendix B should be included in these agreements. Sometimes this may not be feasible. In such cases, the Mission or Bureau may take other appropriate steps to ensure compliance with the statutory restrictions.

#### IV. RELOCATION OF U.S. BUSINESSES -- SECTION 547(a)

A. Summary. In order to facilitate application of the statutory provisions and focus attention on those projects which are most in need of scrutiny, this section is broken into five distinct steps.

There is one important change in this five step process from prior guidance: although the statute uses the term "financial incentive," under these final guidelines, the determination of whether an activity is permitted or prohibited under Section 547 no longer depends on that concept, which proved to be difficult to define and apply. Henceforth, any type of assistance, regardless of whether it might be considered "financial assistance," will be considered subject to Section 547 restrictions.

**Step one** defines two baseline tests which are to be applied at the project design/authorization stage, and which are intended to eliminate broad categories of projects which do not present problems under the guidelines. These tests, framed in terms of questions, are:

1. Is the project, or are components or activities under the project, directed at promoting either foreign or local investment in the recipient country?
2. Could the project reasonably be foreseen to involve the relocation of any U.S. business that would result in a reduction in the number of employees of the business in the U.S.?

If the answer to either of these questions is no, the proposed project is not affected by these guidelines.

If a project is not excluded by either of these baseline tests, the next four steps, which involve greater scrutiny of project activities, must be applied. These steps identify four separate categories of projects/activities within the overall category of problem projects:

**Step two** identifies activities which USAID/W has already specifically determined to be permitted under the guidelines. These activities may be funded without additional controls being built into the project implementation stage.

**Step three** identifies other activities that have also already been scrutinized and are considered per se prohibited under the legislation. These activities may not be funded under any circumstances.

**Step four** provides additional guidance for designing and implementing the projects that remain after steps one through three have been followed. These projects present potential problems under 547(a), but may be funded if adequate controls are built into the implementation stage.

**Step five** provides guidance for analyzing projects which include a mixture of both activities that are either permissible under the legislation or can be subject to adequate implementation controls, and activities that are prohibited under the statute.

## B. Step One: Application of Baseline Tests.

Test Number 1. Is the project, or are components or activities under the project, directed at promoting either foreign or local investment into the recipient country?

The legislative history of 547(a) makes clear that it is not intended to prohibit all activities that could tangentially or indirectly result in U.S. investments that may also involve a relocation overseas, but only those activities consciously directed at promoting investments in the recipient country. In general, USAID's investment promotion activities are well-defined, and these are the projects which merit the highest levels of scrutiny. Other projects may have some effect on foreign investment in the long run, but they are not directed at investment promotion.

For example, most infrastructure projects would not be prohibited under these guidelines, even though the adequacy of infrastructure may be one factor a firm takes into account when deciding to invest or relocate. As another example, a project designed to improve primary health care may create conditions which later may provide some inducement for a U.S. firm to relocate its operations, but since the project itself was not directed at promoting U.S. investments, it would not be prohibited by Section 547(a).

If there is any doubt about whether a project is directed at investment promotion, that doubt should be resolved in favor of a determination that it is.

If the project or activity is not directed in whole or in part at promoting investment, no further analysis is required. If it is, then Test Number 2 should be applied.

Test Number 2: Could the project reasonably be foreseen to involve the relocation of **any** U.S. business that would result in a reduction in the number of employees of the business in the U.S.?

This test is directed at analyzing the potential impact of the project, rather than the

activities themselves. The same types of activities may have different impacts in given situations depending on other circumstances. The kinds of factors that should be analyzed in answering this question are: whether the recipient country or region is geographically attractive to U.S. firms; whether existing infrastructure is adequate to support external investment; whether normal investment patterns reflect activity in the country by U.S. firms; and whether the types of firms targeted under the project are likely candidates for relocation. If, in analyzing these and similar factors, the conclusion is reached that the project may result in the relocation of a U.S. business and loss of U.S. jobs, then the project is subject to the more detailed guidance set forth below. If there is no reasonable likelihood that a relocation could take place within the context of the project, then the project is acceptable under the terms of these guidelines and need not be subject to greater scrutiny or controls.

For the purposes of applying this test, drawn directly from the statute, a U.S. business is defined as one which is physically located in the U.S., rather than one which is owned by U.S. citizens. Additionally, the focal point in examining potential relocations is what may happen in the United States, not what form the overseas relocation may take. Regardless of whether the overseas operation involves a foreign subsidiary rather than the U.S. parent, a joint venture with a local firm, establishment of a new overseas enterprise, or an expansion of the U.S. firm's operations, if a loss of jobs in the U.S. is involved, these guidelines are violated. Even in the case of outsourcing and production sharing, where the objective is to preserve U.S. jobs, if the immediate effect would be a loss of some U.S. jobs to an overseas operation, a violation would occur.

If a project is not categorically excluded by one of the above tests, then the project presents a potential problem under the guidelines and the project activities must be examined more carefully, as described below.

### C. Steps Two - Five: Analysis of Potential Problem Projects.

**Step Two: Permitted Activities.** There are some types of activities which, even though they have a commercial or investment orientation, by their nature would be too indirectly linked to any potential relocation to be considered to be prohibited by the statute.

These activities may therefore be financed by USAID. Activities which fall into this category are:

- policy dialogue designed to improve the overall domestic business and economic climate;
- policy dialogue designed to improve financial and capital markets;
- legal, regulatory, and judicial projects, including those explicitly aimed at commercial activities; and
- dissemination of information regarding the general economic and business climate in a country.

**Step Three: Prohibited Activities.** Some activities are at the other end of the spectrum and are prohibited regardless of the specific circumstances, because they represent too

high a risk of being directly linked to a potential relocation. These activities may not be financed. Activities which fall into this category are:

- investment promotion missions to the U.S.;
- media advertising in the U.S. aimed at encouraging relocation of U.S. firms to the host country;
- training of workers for firms that intend to relocate;
- support for a U.S. office of an organization whose mission includes promoting investment in the host country; and
- general budget support for such an organization if it engages in some activities not permitted under the statute.

It should be noted that some activities which are not on this list can easily evolve into them. For example, a trade mission targeted at increasing a country's exports can easily begin engaging in investment promotion activities as well. An organization which focuses on export

promotion and trade may incrementally begin to undertake additional activities directed at investment promotion. Missions should pay particular attention to activities they are financing when there is potential for evolution of this sort.



Step Four: Implementation Controls. Many other activities fall into a gray area where they are permitted if they don't lead to a relocation, but would be prohibited if they did lead to a relocation. Examples of such activities are:

- technical assistance in establishing linkages with U.S. businesses;
- offices, trade fairs, exhibitions and seminars in the host country;
- media advertising in the U.S. directed at investment promotion; and
- credit, guaranties, insurance, research services, studies, travel to the host country, and technical and management assistance offered to firms contemplating or planning investments in the host country.

Such activities may be included in a project if adequate controls can be built in to guard against relocations taking place. As a first step, the project grant agreement will include the grant clause discussed above, which will alert the implementing agencies to the need to ensure that no violations of these guidelines take place in circumstances under their control. The standard provisions of the grant agreement also include refund rights which should be exercised if the guidelines are violated.

The scope of work for any contractors involved in project implementation should also include a clause directed at these guidelines. The contractor will then be aware that it is responsible for ensuring compliance during the implementation phase. The sample grant clauses included in Appendix B may also be used as contract clauses; however, the Mission may find that a more elaborate clause tailored to the specific project activities is more appropriate for inclusion in a contractor's scope of work. The contractor also should be made aware that the contract clauses containing Section 547-type restrictions need to be passed on to subcontractors.

Finally, the responsible office may want to require that the implementing agency or contractor obtain from any U.S. firm that is a beneficiary of project activities a certification that such firm does not intend to relocate any of its productive operations to the host country. In some cases this may be the only feasible mechanism for ensuring compliance with these guidelines without completely terminating otherwise desirable activities. The need or utility of such a certification will depend on the specific circumstances of the project. An example of such a certification, which should be modified as necessary, is attached as Appendix C.

Step Five: Mixed Permitted-Prohibited. The final category is one in which permitted and prohibited activities are intermixed.

If the permissible activities are clearly distinct and can be segregated from those which do not comply with these guidelines, USAID may fund them. For example, if a host country investment promotion agency carries out discrete programs, some of which are acceptable, USAID may finance the permissible programs if it ensures that the USAID funds are segregated and used only for these activities. Adequate implementation controls should be included, as necessary. A Mission may not provide general budget support to such an agency.

If, on the other hand, the activities are interdependent, USAID may not fund them, even if, when taken in isolation, they would be permitted. For example, a feasibility study which in itself would not violate these guidelines may not be financed if, based on that feasibility study, there is a reasonable likelihood that the host country or other donors would offer incentives to a U.S. firm to relocate.

## V. ASSISTANCE TO EXPORT PROCESSING ZONES -- 547(b)

Paragraph (b) of Section 547 prohibits funding for "establishing or developing" an export processing zone "in which the tax, tariff, labor, environment, and safety laws of that country do not apply." The very nature of an export processing zone generally involves some simplification or reform in local laws, and few activities which USAID would undertake related to export processing zones could be characterized as other than "establishing or developing." Studies and technical assistance for zone design would fall under the prohibition; pre-feasibility studies are one of the few activities which might not, but even these are discouraged, unless required to provide materials for a presidential determination and certification as discussed below.

By its terms, the statute applies not only to designated export processing zones, but also to any "area" subject to the same relief from normal tax, tariff, and labor laws. "Area" means a physically defined, geographic space, including bonded warehouses. Although export processing zones or areas share many features, the essence of such zones or areas is a secure space that is outside the customs territory of the host country. Foreign-made inputs imported into such zones or areas do not ever officially enter the country and are therefore exempt from import duties. Generally, assistance to export processing zones would involve discrete project activities that can be easily avoided. There may be some cases, however, in which a project's beneficiaries are not fully identified and may potentially include zones or businesses operating in zones. In these cases, as with Section 547(a), the standard clauses that are to be included in all grant agreements will act as the first level of protection against a grantee carrying out prohibited activities. In some cases, it may also be prudent to include either a similar or more detailed clause in the scope of work of contractors implementing project activities, particularly if such contractors would have some discretion in identifying project beneficiaries.

The statute permits an exception to the broad prohibitions of 547(b) if "the President determines and certifies that such assistance is not likely to cause a loss of jobs within the United States." We have interpreted the statutory language of 547(b) expansively signifying concern with any loss of jobs in the United States, whether or not such loss may be offset elsewhere in the U.S. economy by the positive effects of USAID assistance to an export processing zone, or by the positive effects of other USAID interventions. This is a very low threshold, and we believe that certifications under the statute that job loss is not likely to occur will be extremely rare.

In those limited cases where a certification may be appropriate, the Mission or Bureau making the request will need to provide an in-depth analysis of the factors which would demonstrate that job losses in the United States are unlikely to occur, either as a result of the relocation of U.S. firms to the zone, or as a result of increased competition from foreign firms operating in the zone which could cause U.S. firms to lose business and consequently reduce their operations. These may include such general economic factors as a lack of comparative advantage of the host country (labor costs, infrastructure, availability of transportation, and energy costs, including factors specific to the zone); lack of geographic attractiveness to U.S. investors; and traditional investment and market patterns that mitigate the likelihood of job loss in the U.S. The results of any specific market surveys and feasibility studies that analyze the attractiveness of the zone to U.S. or other investors should also be included. Finally, any analysis available on the effect on specific industries, particularly those which may be declining or import sensitive industries in the U.S., should be part of the request for certification.

Missions or Bureaus requesting a certification should also include a discussion of any particularly controversial issues with respect to the zone that the Administrator should be aware of, even though they may not be relevant to the point of job loss. Such issues may include exemption from normal environmental controls, lower than normal minimum wage standards, and reduced protection of workers' rights.

The authority to make determinations and certifications under the statute has been delegated to the USAID Administrator. Requests should be directed to PPC for initial vetting, in conjunction with the responsible Bureau. PPC will then forward them to the Administrator for final determination. Requests will be considered only on a case-by-case basis; no blanket waivers for a country or region will be granted.

## VI. INTERNATIONALLY RECOGNIZED WORKERS RIGHTS -- 547(c)

Section 547(c) differs from previous legislation designed to protect workers' rights, which focused on the degree of protection afforded and progress made at the country level, by focusing instead on project level activities.

The test to be applied under Section 547(c) is whether the project would contribute to the violation of workers' rights. The Agency has been proactive in implementing a consistent policy of promoting workers' rights, which has included enhancing the capabilities of ministries of labor and local labor organizations.

Because the statute is directed at the project level rather than the country level, that does not mean Missions should not be concerned with failure of a host country's labor laws to comply with Section 502(a)(4) of the 1974 Trade Act. Missions and Bureaus should give particularly close scrutiny to projects involving the labor sector in such a country.

A good source of information on the degree of respect for workers' rights in a particular

country is the State Department's annual human rights report. This report is the mechanism by which the Executive Branch complies with the requirement of the GSP Renewal Act of 1984 to report on the status of internationally recognized workers' rights within each beneficiary country. The human rights report may identify particular sectors or industries in a country that are recognized as engaging in serious violations of workers' rights. USAID should pay particular attention to those industries and either avoid projects which could contribute to violations or build adequate controls into the projects.

Additionally, as with the other two provisions of the statute, all grant agreements should include a standard clause requiring compliance by the grantee with Section 547(c). A similar clause should be included in the scope of work of implementing contractors who are carrying out activities in sectors where problems may occur. The standard clause attached in Appendix B, which is the one which will be included in the Handbook 3 standard provisions, is general in nature. It does not specify the rights which are incorporated into Section 547(c) by reference to Section 502(A)(4) of the Trade Act of 1974. There may be some circumstances where the Mission finds it important to include this level of specificity. Appendix A contains the text of Section 502(A)(4), and missions may include this text in grant agreements or contracts when they consider it appropriate to do so.

In some cases, Missions may require that the grantee or contractors obtain certifications of compliance from the ultimate beneficiaries. Under some circumstances, however, this may not be a meaningful mechanism for ensuring compliance with the statute.

Activities involving the informal sector, micro and small-scale enterprise, and smallholder agriculture present a somewhat unique situation in terms of assessing respect for workers' rights. It is clear that the rights enumerated in Sections 502(A)(4)(a)-(e) of the 1974 Trade Act may not be fully enforced with regard to these sectors in many of the countries in which USAID work. Although individual countries may on the whole be found to be taking steps toward implementing workers' rights, these sectors may be the last to receive the benefits of on-going reforms.

Congress recognized the distinct nature of these sectors when it exempted them from application of the prohibitions contained in Section 547.

## APPENDIX A

### TEXT OF LEGISLATION

#### IMPACT ON JOBS IN THE UNITED STATES

Sec. 547. None of the funds appropriated by this Act may be obligated or expended to provide-

(a) 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;

(b) assistance for the purpose of establishing or developing in a foreign country any export processing zone or designated area in which the tax, tariff, labor, environment, and safety laws of that country do not apply, in part or in whole, to activities carried out within that zone or area, unless the President determines and certifies that such assistance is not likely to cause a loss of jobs within the United States; or

(c) assistance for any project or activity that contributes to the violation of internationally recognized workers' rights, as defined in Section 502(A)(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: Provided, That in recognition that the application of this subsection should be commensurate with the level of development of the recipient country and sector, the provisions of this subsection shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

#### SECTION 502(A)(4) OF THE TRADE ACT OF 1974

For the purposes of this title, the term "internationally recognized workers rights" includes-

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

## APPENDIX B

### STANDARD CLAUSES TO BE INCLUDED IN ALL GRANTS AND INTER-AGENCY AGREEMENTS, AND IN CONTRACTS AS APPROPRIATE:

"No funds or other support provided hereunder may be used in a project or activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States."

"No funds or other support provided hereunder may be used in a project or activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID"

"No funds or other support provided hereunder may be used in an activity which contributes to the violation of internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country."

## APPENDIX C

### EXAMPLES OF CERTIFICATIONS, RESOLUTIONS, CLAUSES, ETC.:

#### CERTIFICATION

"I have reviewed Section 547 of P.L.103-87 (the FY 1994 Foreign Operations Appropriations Act) and certify that my participation in this [trade mission] [project] [activity] will not result in a reduction in the number of my firm's employees in the United States because my firm is replacing U.S. production with production outside the U.S."

## APPENDIX C

### SECTION 547 CLAUSE CURRENT USAID CONTRACT FOR TRADE IMPLEMENTATION AND POLICY PROGRAM (TIPP)

"Restricted Assistance Activities. The Contractor agrees that, unless otherwise authorized by USAID in writing, no advice, services or assistance of any kind will be provided under this Contract by the Contractor, its employees or subcontractors, which would:

- 1) Induce a business enterprise in the United States to relocate productive facilities outside the United States; or
- 2) Assist in the establishment or development of export zones in Indonesia; or
- 3) Contribute to the violation of internationally recognized workers' rights as defined in Section 502(A)(4) of the Trade Act of 1974.

In the event the Contractor is requested or wishes to provide assistance in any of the areas listed above, or requires clarification from USAID as to whether the provision of advice, services or assistance in any specific instance would be consistent with the limitations set forth above, the Contractor will immediately notify the Contracting Officer, providing a detailed description of the proposed contract activity and the restriction affected. The Contractor will not proceed with the activity unless and until advised by the Contracting Officer that it may do so.

The provisions of this clause are intended to implement Section 547 of P.L. 103-87, the Foreign Operations, Export Financing, and Related Appropriations Act, 1994, and related USAID policy guidance. The Contractor agrees to comply with all policy guidance issued by USAID with regard to Section 547, as from time to time revised and/or supplemented.

The Contractor will ensure that all employees and subcontractors providing services under this contract are made aware of the restrictions set forth in this clause and will include this clause in all subcontracts and other subagreements entered into hereunder."



APPENDIX C  
SECTION 547 IMPLEMENTATION AGREEMENT  
BETWEEN THE ENTERPRISE FUNDS  
AND THE U.S. GOVERNMENT

To comply with Section 547 of the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994," the Enterprise Funds and the U.S. Agency for International Development agree as follows:

Each Enterprise Fund shall:

1. Add to its Due Diligence process the responsibility for the collection of information as to whether a potential investment would be in violation of Section 547.
2. Amend Article III, Section 2 of each Fund's "Statement of Corporate Policies and Procedures" by adding part (c) so that Section 2 reads in its entirety as follows:

"2. As a matter of policy, the Corporation shall require that recipients of grants and other forms of assistance from the Corporation certify, as a condition to such assistance, that such funds as are provided by the Corporation not be utilized for:

  - a. the manufacture or sale of abortion equipment or the provision of abortion services;
  - b. the manufacture or sale of munitions articles or services; and
  - c. any action that would be in violation of Section 547 of the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994." The Corporation shall discuss with each recipient the intent of the legislation, the language of the Act itself, and each recipient shall represent to the Corporation at the time the assistance is authorized or before that it will not use the assistance in a manner that would violate Section 547."
3. Use the semi-annual USAID program reviews to provide to USAID written confirmation that the Funds' actions regarding Section 547 are in order for investments authorized by the Funds during such program review period.

These principles will be incorporated in the December 30, 1991, Protocol Agreement between the Enterprise Funds and USAID. The Protocol Agreement, as modified, will then be incorporated by USAID into its Grant Agreements with the Funds.

## APPENDIX C

### RESOLUTION TO AMEND THE BULGARIAN-AMERICAN ENTERPRISE FUND STATEMENT OF CORPORATE POLICIES AND PROCEDURES

RESOLVED, that Article III, Section 2 of the "Bulgarian-American Enterprise Fund Statement of Corporate Policies and Procedures" be amended to read in its entirety as follows:

"2. As a matter of policy, the Corporation shall require that recipients of grants and other forms of assistance from the Corporation certify, as a condition to such assistance, that such funds as are provided by the Corporation not be utilized for:

- a. the manufacture or sale of abortion equipment or the provision of abortion services;
- b. the manufacture or sale of munitions articles or services; and
- c. any action that would be in violation of Section 547 of the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994." The Corporation shall discuss with each recipient the intent of the legislation, the language of the Act itself, and each recipient shall represent to the Corporation at or before the time the assistance is provided that it will not use the assistance in a manner that would violate Section 547."