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Brief Legislative History on Program Principles for Trade - Investment-Related Activities and the “Impact on U.S. Jobs” and "Workers' Rights"

In 1994, USAID issued PD 20 to implement Section 599 of Pub. L. 102-391 and Section 547 of Pub. L. 103-87. PD 20, following the legislation in these Appropriations Acts, established the guidelines prohibiting the use of appropriated funds for financial incentives to U.S. enterprises to relocate abroad, or for establishing or developing export processing zones (EPZs), if such activities were likely to result in the loss of jobs in the United States. The legislation also prohibited the use of funds for assistance that would contribute to violations of internationally recognized workers’ rights. These prohibitions were incorporated into every subsequent Appropriations Act between 1993 and 2001.

The only significant change in the “Impact on Jobs” legislation provision occurred in the FY 2002 Appropriations Act. This new legislation eliminated the provision: that would permit prohibited assistance to an EPZ if the President determined that the EPZ was not likely to cause a loss of U.S. jobs.

In the original legislation, Section 547 of Pub. L. 103-87 prohibited the use of appropriated funds for a number of activities related to investment promotion. The associated legislative history recognizes that such prohibitions were 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. 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 such investments in the recipient country.

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, as noted above. 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.

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