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CODIFICATION

The Agricultural Trade Act of 1978, comprising this chapter, was originally enacted as Pub. L. 95–501, Oct. 21, 1978, 92 Stat. 1685, which enacted sections 1707b to 1707d, 1765a to 1765h, 1769, and 2211a of this title, amended sections 1707a, 1761, 1762, 1764, 1765, and 1766b of this title and section 5314 of Title 5, Government Organization and Employees, redesignated sections 1762(d), (f), and 1763 as sections 1766a to 1766c of this title, and enacted provisions set out as notes under sections 612c–3, 1761, and 2211a of this title and section 2431 of Title 19, Customs Duties. The Act is shown herein, however, as having been added by Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3668, because of the extensive amendments, renumbering, reorganization of subject matter, and expansion of the basic Act's provisions by Pub. L. 101–624.

SUBCHAPTER I—GENERAL PROVISIONS

§5601. Purpose

It is the purpose of this chapter to increase the profitability of farming and to increase opportunities for United States farms and agricultural enterprises by—

- (1) increasing the effectiveness of the Department of Agriculture in agricultural export policy formulation and implementation;
- (2) improving the competitiveness of United States agricultural commodities and products in the world market; and
- (3) providing for the coordination and efficient implementation of all agricultural export programs.

(Pub. L. 95–501, title I, §101, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3669.)

PRIOR PROVISIONS

A prior section 101 of Pub. L. 95–501 amended section 1707a of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–465, title IV, §411(a)(1), Dec. 8, 1994, 108 Stat. 4962, provided that: "This subsection [amending section 5651 of this title] may be cited as the 'Export Enhancement Program Amendments of 1994'."

SHORT TITLE

Pub. L. 95–501, §1, as added by Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3669, provided that: "This Act [enacting this chapter] may be cited as the 'Agricultural Trade Act of 1978'."

§5602. Definitions

As used in this chapter—

(1) **Agricultural commodity**

The term "agricultural commodity" means any agricultural commodity, food, feed, fiber, or livestock (including livestock as it is defined in section 1471(2) of this title and insects), and any product thereof.

(2) **Developing country**

The term "developing country" means a country that—

- (A) has a shortage of foreign exchange earnings and has difficulty accessing sufficient commercial credit to meet all of its food needs, as determined by the Secretary; and
- (B) has the potential to become a commercial market for agricultural commodities.

(3) **Secretary**

The term "Secretary" means the Secretary of Agriculture.

(4) **Service**

The term "Service" means the Foreign Agricultural Service of the Department of Agriculture.

(5) **Unfair trade practice**

(A) **In general**

Subject to subparagraph (B), the term "unfair trade practice" means any act, policy, or practice of a foreign country that—

- (i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement to which the United States is a party;
- (ii) in the case of a monopolistic state trading enterprise engaged in the export sale of an agricultural commodity, implements a pricing practice that is inconsistent with sound commercial practice;
- (iii) provides a subsidy that—
  - (I) decreases market opportunities for United States exports; or
  - (II) unfairly distorts an agricultural market to the detriment of United States exporters;

(iv) imposes an unfair technical barrier to trade, including—

- (I) a trade restriction or commercial requirement (such as a labeling requirement) that adversely affects a new technology (including biotechnology); and
- (II) an unjustified sanitary or phytosanitary restriction (including any restriction that, in violation of the Uruguay Round Agreements, is not based on scientific principles;<sup>1</sup>

(v) imposes a rule that unfairly restricts imports of United States agricultural commodities in the administration of tariff rate quotas; or

(vi) fails to adhere to, or circumvents any obligation under, any provision of a trade agreement with the United States.

(B) **Consistency with 1974 Trade Act**

Nothing in this chapter may be construed to authorize the Secretary to make any determination regarding an unfair trade practice that is inconsistent with section 2411 of title 19.

(6) **United States**

The term "United States" includes each of the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

#### (7) United States agricultural commodity

The term "United States agricultural commodity" means—

- (A) an agricultural commodity or product entirely produced in the United States; or
- (B) a product of an agricultural commodity—
  - (i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and
  - (ii) that the Secretary determines to be a high value agricultural product.

For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46 in waters that are not waters (including the territorial sea) of a foreign country.

#### (8) Independent states of the former Soviet Union

The term "independent states of the former Soviet Union" means the following: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

(Pub. L. 95–501, title I, §102, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3669; amended Pub. L. 102–511, title VII, §702, Oct. 24, 1992, 106 Stat. 3349; Pub. L. 104–127, title II, §243(c), Apr. 4, 1996, 110 Stat. 967; Pub. L. 107–171, title III, §3104(b), May 13, 2002, 116 Stat. 290.)

#### AMENDMENTS

**2002**—Par. (5)(A)(ii) to (vi). Pub. L. 107–171 added cls. (ii) to (vi) and struck out former cl. (ii) which read as follows: "is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce."

**1996**—Par. (7). Pub. L. 104–127 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

"(A) with respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

"(B) with respect to a product of an agricultural commodity—

"(i) a product all of the agricultural components of which are entirely produced in the United States; or

"(ii) any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if—

"(I) such component is an added, de minimis component,

"(II) such component is not commercially produced in the United States, and

"(III) there is no acceptable substitute for such component that is commercially produced in the United States."

**1992**—Par. (1). Pub. L. 102–511, §702(a), substituted "feed, fiber, or livestock (including livestock as it is defined in section 1471(2) of this title and insects)" for "feed, or fiber".

Par. (8). Pub. L. 102–511, §702(b), added par. (8).

<sup>1</sup> So in original. There probably should be a closing parenthesis.

### §5603. Agricultural export promotion strategy

#### (a) In general

The Secretary shall develop a strategy for implementing Federal agricultural export promotion programs that takes into account the new market opportunities for agricultural products, including opportunities that result from—

- (1) the North American Free Trade Agreement and the Uruguay Round Agreements;
- (2) any accession to membership in the World Trade Organization;
- (3) the continued economic growth in the Pacific Rim; and
- (4) other developments.

#### (b) Purpose of strategy

The strategy developed under subsection (a) shall encourage the maintenance, development, and expansion of export markets for United States agricultural commodities and related products, including high-value and value-added products.

#### (c) Goals of strategy

The strategy developed under subsection (a) shall have the following goals:

- (1) increase the value of United States agricultural exports each year.
- (2) Increase the value of United States agricultural exports each year at a faster rate than the rate of increase in the value of overall world export trade in agricultural products.
- (3) Increase the value of United States high-value and value-added agricultural exports each year.
- (4) Increase the value of United States high-value and value-added agricultural exports each year at a faster rate than the rate of increase in the value of overall world export trade in high-value and value-added agricultural products.
- (5) Ensure that to the extent practicable—
  - (A) all obligations undertaken in the Uruguay Round Agreement on Agriculture that significantly increase access for United States agricultural commodities are implemented to the extent required by the Uruguay Round Agreements; or
  - (B) applicable United States laws are used to secure United States rights under the Uruguay Round Agreement on Agriculture.

#### (d) Priority markets

##### (1) Identification of markets

In developing the strategy required under subsection (a), the Secretary shall annually identify as priority markets—

- (A) those markets in which imports of agricultural products show the greatest potential for increase; and
- (B) those markets in which, with the assistance of Federal export promotion programs, exports of United States agricultural products show the greatest potential for increase.

##### (2) Identification of supporting offices

The President shall identify annually in the budget of the United States Government submitted under section 1105 of title 31 each overseas office of the Foreign Agricultural Service that provides assistance to United States exporters in each of the priority markets identified under paragraph (1).

(Pub. L. 95–501, title I, §103, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3670; amended Pub. L. 102–237, title III, §308, Dec. 13, 1991, 105 Stat. 1856; Pub. L. 104–127, title II, §241(a), Apr. 4, 1996, 110 Stat. 963.)

#### AMENDMENTS

**1996**—Pub. L. 104–127 amended section generally, substituting present provisions for provisions requiring development of long-term agricultural trade strategy and providing for goals and contents of strategy, establishment of priority markets, review of strategy, confidentiality, withholding of information from Congress, and termination of section on Dec. 31, 1995.

**1991**—Subsec. (d)(2). Pub. L. 102–237 inserted a closing parenthesis before period at end.

#### PROHIBITION ON USE OF FUNDS FOR PROMOTION OF TOBACCO OR TOBACCO PRODUCTS

Pub. L. 108–199, div. A, title VII, §770, Jan. 23, 2004, 118 Stat. 40, provided that: "Hereafter, no funds provided in this or any other Act shall be available to the Secretary of Agriculture acting through the Foreign Agricultural Service to promote the sale or export of tobacco or tobacco products."

#### USE OF DEPARTMENT OF AGRICULTURE PROGRAMS FOR PROMOTION OF WOOD AND PROCESSED WOOD PRODUCTS

Pub. L. 100–418, title IV, §4404, Aug. 23, 1988, 102 Stat. 1402, provided that: "The Secretary of Agriculture shall actively use Department of Agriculture concessional programs and export credit guarantee programs to promote the export of wood and processed wood products."

### §5603a. Global market strategy

#### (a) In general

Not later than 180 days after May 13, 2002, and biennially thereafter, the Secretary of Agriculture shall consult with the Committee on Agriculture, and the Committee on International Relations, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the formulation and implementation of a global market strategy for the Department of Agriculture that, to the maximum extent practicable—

- (1) identifies opportunities for the growth of agricultural exports to overseas markets;
- (2) ensures that the resources, programs, and policies of the Department are coordinated with those of other agencies; and
- (3) remove <sup>1</sup> barriers to agricultural trade in overseas markets.

#### (b) Review

The consultations under subsection (a) shall include a review of—

- (1) the strategic goals of the Department, and
- (2) the progress of the Department in implementing the strategic goals through the global market strategy.

(Pub. L. 107–171, title III, §3206, May 13, 2002, 116 Stat. 301.)

#### CODIFICATION

Section was enacted as part of the Farm Security and Rural Investment Act of 2002, and not as part of the Agricultural Trade Act of 1978 which comprises this chapter.

#### CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

<sup>1</sup> So in original. Probably should be "removes".

### §5604. Preservation of traditional markets

The Secretary shall, in implementing programs of the Department of Agriculture intended to encourage or assist exports of agricultural commodities, seek to preserve traditional markets for United States agricultural commodities.

(Pub. L. 95–501, title I, §104, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3672.)

### §5605. Independence of authorities

Each authority granted under this chapter shall be in addition to, and not in lieu of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

(Pub. L. 95–501, title I, §105, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3672.)

### §5606. Implementation of commitments under Uruguay Round Agreements

Not later than September 30 of each year, the Secretary shall evaluate whether the obligations undertaken by foreign countries under the Uruguay Round Agreement on Agriculture are being fully implemented. If the Secretary has reason to believe (based on the evaluation) that any foreign country, by not implementing the obligations of the country, may be significantly constraining an opportunity for United States agricultural exports, the Secretary shall—

- (1) submit the evaluation to the United States Trade Representative; and
- (2) transmit a copy of the evaluation to the Committee on Agriculture, and the Committee on Ways and Means, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Finance, of the Senate.

(Pub. L. 95–501, title I, §106, as added Pub. L. 104–127, title II, §242(a), Apr. 4, 1996, 110 Stat. 964.)

### §5607. Exporter assistance initiative

To provide a comprehensive source of information to facilitate exports of United States agricultural commodities, the Secretary shall maintain on a website on the Internet information to assist exporters and potential exporters of United States agricultural commodities.

(Pub. L. 95–501, title I, §107, as added Pub. L. 107–171, title III, §3101, May 13, 2002, 116 Stat. 288.)

## §5608. Foreign trade missions

### (a) Tribal representation on trade missions

#### (1) In general

The Secretary, in consultation with the Tribal Advisory Committee established under subsection (b)(2) of section 6921 of this title (referred to in this section as the "Advisory Committee"), shall seek—

- (A) to support the greater inclusion of Tribal agricultural and food products in Federal trade-related activities; and
- (B) to increase the collaboration between Federal trade promotion efforts and other Federal trade-related activities in support of the greater inclusion sought under subparagraph (A).

#### (2) Interdepartmental coordination

In carrying out activities to increase the collaboration described in paragraph (1)(B), the Secretary shall coordinate with—

- (A) the Secretary of Commerce;
- (B) the Secretary of State;
- (C) the Secretary of the Interior; and
- (D) the heads of any other relevant Federal agencies.

### (b) Report; goals

#### (1) Report

Not later than 2 years after December 20, 2018, the Secretary shall submit a report describing the efforts of the Department of Agriculture and other Federal agencies under this section to—

- (A) the Advisory Committee;
- (B) the Committee on Agriculture of the House of Representatives;
- (C) the Committee on Energy and Commerce of the House of Representatives;
- (D) the Committee on Agriculture, Nutrition, and Forestry of the Senate;
- (E) the Committee on Commerce, Science, and Transportation of the Senate; and
- (F) the Committee on Indian Affairs of the Senate.

#### (2) Goals

Not later than 90 days after December 20, 2018, the Secretary shall establish goals for measuring, in an objective and quantifiable format, the extent to which Indian Tribes and Tribal agricultural and food products are included in the trade-related activities of the Department of Agriculture.

(Pub. L. 115–334, title III, §3312, Dec. 20, 2018, 132 Stat. 4623.)

## CODIFICATION

Section was enacted as part of the Agriculture Improvement Act of 2018, and not as part of the Agricultural Trade Act of 1978 which comprises this chapter.

## DEFINITION OF "SECRETARY"

"Secretary" as meaning the Secretary of Agriculture, see section 2 of Pub. L. 115–334, set out as a note under section 9001 of this title.

## SUBCHAPTER II—AGRICULTURAL EXPORT PROGRAMS

## PART A—PROGRAMS

## §5621. Direct credit sales program

### (a) Short-term program

To promote the sale of agricultural commodities, the Commodity Credit Corporation may finance the commercial export sale of such commodities from privately owned stocks on credit terms for not to exceed a 3-year period.

### (b) Intermediate-term program

Subject to subsection (c), to promote the sale of agricultural commodities the Commodity Credit Corporation may finance the commercial export sales of agricultural commodities from privately owned stocks on credit terms for a period of not less than 3 years nor in excess of 10 years in a manner that will directly benefit United States agricultural producers.

### (c) Determinations

The Commodity Credit Corporation shall not finance an export sale under subsection (b) unless the Secretary determines that such sale will—

- (1) develop, expand, or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities, without displacing normal commercial sales;
- (2) improve the capability of the importing country to purchase and use, on a long-term basis, United States agricultural commodities; or
- (3) otherwise promote the export of United States agricultural commodities.

The reference in paragraphs (1) and (2) to "on a long-term basis" shall not apply in the case of determinations with respect to sales to the independent states of the former Soviet Union.

### (d) Use of program

#### (1) General uses

The Commodity Credit Corporation may use export sales financing authorized under this section—

- (A) to increase exports of agricultural commodities;
- (B) to compete against foreign agricultural exports;
- (C) to assist countries in meeting their food and fiber needs, particularly—
  - (i) developing countries; and
  - (ii) countries that are emerging markets that have committed to carry out, or are carrying out, policies that promote economic freedom, private domestic production of food commodities for domestic consumption, and the creation and expansion of efficient domestic markets for the purchase and sale of agricultural commodities; and

(D) for such other purposes as the Secretary determines appropriate consistent with the provisions of subsection (c).

#### (2) General restrictions

Export sales financing authorized under this section shall not be used for foreign aid, foreign policy, or debt rescheduling purposes. The provisions of the cargo preference laws shall not apply to export sales financed under this section.

### (e) Terms of credit assistance

Any contract for the financing of exports by the Commodity Credit Corporation under this section shall include—

- (1) a requirement that repayment shall be made in dollars with interest accruing thereon as determined appropriate by the Secretary; and
- (2) a requirement, if the Secretary determines such requirement appropriate to protect the interests of the United States, that an initial payment be made by the purchaser at the time of sale or shipment of the agricultural commodity that is subject to the contract.

### (f) Restrictions

The Commodity Credit Corporation may not make export sales financing authorized under this section available in connection with sales of an agricultural commodity to any country that the Secretary determines cannot adequately service the debt associated with such sale.

(Pub. L. 95–501, title II, §201, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3672; amended Pub. L. 102–511, title VII, §707(a)–(c), Oct. 24, 1992, 106 Stat. 3350, 3351; Pub. L. 104–127, title II, §277(c)(2), Apr. 4, 1996, 110 Stat. 979.)

## PRIOR PROVISIONS

A prior section 201 of Pub. L. 95–501 enacted section 1707b of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

## AMENDMENTS

1996—Subsec. (d)(1)(C)(ii). Pub. L. 104–127 substituted "emerging markets" for "emerging democracies".

1992—Subsec. (c). Pub. L. 102–511, §707(a), inserted sentence at end.

Subsec. (d)(1)(C). Pub. L. 102–511, §707(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "to assist countries, particularly developing countries, in meeting their food and fiber needs; and".

Subsec. (f). Pub. L. 102–511, §707(c), added subsec. (f).

## REGULATIONS

Pub. L. 102–511, title VII, §707(d), Oct. 24, 1992, 106 Stat. 3351, required Secretary of Agriculture to issue final regulations to implement this section not later than 30 days after Oct. 24, 1992, prior to repeal by Pub. L. 104–127, title II, §276, Apr. 4, 1996, 110 Stat. 977.

## §5622. Export credit guarantee program

### (a) Short-term credit guarantees

The Commodity Credit Corporation may guarantee the repayment of credit made available to finance commercial export sales of agricultural commodities, including processed agricultural products and high-value agricultural products, from privately owned stocks on credit terms that do not exceed a 24-month period.

### (b) Purpose of program

The Commodity Credit Corporation may use export credit guarantees authorized under this section—

- (1) to increase exports of agricultural commodities;
- (2) to compete against foreign agricultural exports;
- (3) to assist countries in meeting their food and fiber needs, particularly—

- (A) developing countries; and
  - (B) countries that are emerging markets that have committed to carry out, or are carrying out, policies that promote economic freedom, private domestic production of food commodities for domestic consumption, and the creation and expansion of efficient domestic markets for the purchase and sale of agricultural commodities; and

(4) for such other purposes as the Secretary determines appropriate.

### (c) Restrictions on use of credit guarantees

Export credit guarantees authorized by this section shall not be used for foreign aid, foreign policy, or debt rescheduling purposes. The provisions of the cargo preference laws shall not apply to export sales with respect to which credit is guaranteed under this section.

### (d) Restrictions

The Commodity Credit Corporation shall not make credit guarantees available in connection with sales of agricultural commodities to any obligor that the Secretary determines cannot adequately service the debt associated with such sale.

### (e) Terms

Export credit guarantees issued pursuant to this section shall contain such terms and conditions as the Commodity Credit Corporation determines to be necessary.

### (f) United States agricultural commodities

The Commodity Credit Corporation shall finance or guarantee under this section only United States agricultural commodities.

### (g) Ineligibility of financial institutions

#### (1) In general

A financial institution shall be ineligible to receive an assignment of a credit guarantee issued by the Commodity Credit Corporation under this section if it is determined by the Corporation, at the time of the assignment, that such financial institution—

- (A) is the financial institution issuing the letter of credit or a subsidiary of such institution; or
- (B) is owned or controlled by an entity that owns or controls that financial institution issuing the letter of credit.

#### (2) Third country banks

The Commodity Credit Corporation may guarantee under subsection (a) the repayment of credit made available to finance an export sale irrespective of whether the obligor is located in the country to which the export sale is destined.

#### (h) Conditions for fish and processed fish products

In making available any guarantees of credit under this section in connection with sales of fish and processed fish products, the Secretary shall make such guarantees available under terms and conditions that are comparable to the terms and conditions that apply to guarantees provided with respect to sales of other agricultural commodities under this section.

#### (i) Consultation on agricultural export credit programs

The Secretary and the United States Trade Representative shall consult on a regular basis with the Committee on Agriculture, and the Committee on International Relations, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the status of multilateral negotiations regarding agricultural export credit programs.

#### (j) Administration

##### (1) Definition of long term

In this subsection, the term "long term" means a period of 10 or more years.

##### (2) Guarantees

In administering the export credit guarantees authorized under this section, the Secretary shall—

- (A) develop an approach to risk evaluation that facilitates accurate country risk designations and timely adjustments to the designations (on an ongoing basis) in response to material changes in country risk conditions, with ongoing opportunity for input and evaluation from the private sector;
- (B) adjust risk-based guarantees as necessary to ensure program effectiveness and United States competitiveness;
- (C) work with industry to ensure, to the maximum extent practicable, that risk-based fees associated with the guarantees cover the operating costs and losses over the long term; and
- (D) notwithstanding any other provision of this section, administer and carry out (only after consulting with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate) the program pursuant to such terms as may be agreed between the parties to address the World Trade Organization dispute WTO/DS267 to the extent not superseded by any applicable international undertakings on officially supported export credits to which the United States is a party.

(Pub. L. 95–501, title II, §202, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3673; amended Pub. L. 102–237, title III, §334, Dec. 13, 1991, 105 Stat. 1859; Pub. L. 102–511, title VII, §§708, 709(a), Oct. 24, 1992, 106 Stat. 3351; Pub. L. 104–127, title II, §§243(a), 277(c)(3), Apr. 4, 1996, 110 Stat. 965, 979; Pub. L. 107–171, title III, §3102(a)–(c), May 13, 2002, 116 Stat. 289; Pub. L. 110–246, title III, §3101(a), (c), June 18, 2008, 122 Stat. 1831, 1832; Pub. L. 113–79, title III, §3101(a), Feb. 7, 2014, 128 Stat. 778.)

### PRIOR PROVISIONS

A prior section 202 of Pub. L. 95–501 enacted section 1707c of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

### AMENDMENTS

**2014**—Subsec. (a). Pub. L. 113–79, §3101(a)(1), substituted "24-month" for "3-year".

Subsec. (d). Pub. L. 113–79, §3101(a)(2), substituted "obligor" for "country".

Subsecs. (i), (j). Pub. L. 113–79, §3101(a)(3), (4), redesignated subsecs. (j) and (k) as (i) and (j), respectively, and struck out former subsec. (i) which related to percentages of export credit guarantees issued to promote export of processed or high-value agricultural products in fiscal years 1996 through 2007.

Subsec. (j)(2)(A), (B). Pub. L. 113–79, §3101(a)(5)(A), (B), redesignated subpars. (C) and (D) as (A) and (B), respectively, and struck out former subpars. (A) and (B) which read as follows:

"(A) maximize the export sales of agricultural commodities;

"(B) maximize the export credit guarantees that are made available and used during the course of a fiscal year;"

Subsec. (j)(2)(C). Pub. L. 113–79, §3101(a)(5)(B), (D)(i), redesignated subpar. (E) as (C) and struck out ", but do not exceed," after "cover". Former subpar. (C) redesignated (A).

Subsec. (j)(2)(D). Pub. L. 113–79, §3101(a)(5)(C), (D)(ii), (E), added subpar. (D). Former subpar. (D) redesignated (B).

Subsec. (j)(2)(E). Pub. L. 113–79, §3101(a)(5)(B), redesignated subpar. (E) as (C).

Subsec. (k). Pub. L. 113–79, §3101(a)(4), redesignated subsec. (k) as (j).

**2008**—Subsec. (a). Pub. L. 110–246, §3101(a)(1), struck out par. (1) designation and heading before "The Commodity" and struck out pars. (2) and (3) which related to supplier credits and extended supplier credits, respectively.

Subsec. (b). Pub. L. 110–246, §3101(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "Subject to the provisions of subsection (c) of this section, the Commodity Credit Corporation may guarantee the repayment of credit made available by financial institutions in the United States to finance commercial export sales of agricultural commodities, including processed agricultural products and high-value agricultural products, from privately owned stocks on credit terms that are for not less than a 3-year period nor for more than a 10-year period in a manner that will directly benefit United States agricultural producers."

Subsec. (b)(4). Pub. L. 110–246, §3101(c)(1), struck out ", consistent with the provisions of subsection (c) of this section" after "appropriate".

Subsec. (c). Pub. L. 110–246, §3101(a)(2), (3), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to requirements for guarantees under former subsec. (b).

Subsec. (d). Pub. L. 110–246, §3101(c)(2), struck out par. (1) designation and heading before "The Commodity" and struck out par. (2) which related to criteria for the determination required under this subsec. with respect to credit guarantees under former subsec. (b).

Pub. L. 110–246, §3101(a)(3), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Subsecs. (e) to (g). Pub. L. 110–246, §3101(a)(3), redesignated subsecs. (g) to (i) as (e) to (g), respectively. Former subsecs. (e) and (f) redesignated (c) and (d), respectively.

Subsec. (g)(2). Pub. L. 110–246, §3101(c)(3), substituted "subsection (a)" for "subsections (a) and (b)".

Subsecs. (h) to (l). Pub. L. 110–246, §3101(a)(3), (4), redesignated subsecs. (j) to (l) as (h) to (j), respectively, and added subsec. (k). Former subsecs. (h) and (i) redesignated (f) and (g), respectively.

**2002**—Subsec. (a)(3). Pub. L. 107–171, §3102(a), added par. (3).

Subsec. (k)(1). Pub. L. 107–171, §3102(b), substituted "through 2007" for ", 2001, and 2002".

Subsec. (l). Pub. L. 107–171, §3102(c), added subsec. (l).

**1996**—Subsec. (a). Pub. L. 104–127, §243(a)(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (d)(3)(B). Pub. L. 104–127, §277(c)(3), substituted "emerging markets" for "emerging democracies".

Subsec. (f). Pub. L. 104–127, §243(a)(2), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (h). Pub. L. 104–127, §243(a)(3), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: "The Commodity Credit Corporation shall finance or guarantee under this section only United States agricultural commodities. The Commodity Credit Corporation shall not finance or guarantee under this section the value of any foreign agricultural component."

Subsec. (i). Pub. L. 104–127, §243(a)(4), designated existing provisions as par. (1), inserted heading, struck out former par. (1) which read as follows: "is not in a sound financial condition"; redesignated pars. (2) and (3) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (k). Pub. L. 104–127, §243(a)(5), added subsec. (k) and struck out heading and text of former subsec. (k). Text read as follows:

"(1) IN GENERAL.—In issuing export credit guarantees under this section in connection with sales to the independent states of the former Soviet Union, the Commodity Credit Corporation shall, to the extent practicable and subject to paragraph (2), ensure that no less than 35 percent of the total amount of credit guarantees issued for a fiscal year are issued to promote the export of processed and high-value agricultural products and that the balance are issued to promote the export of bulk or raw agricultural commodities.

"(2) LIMITATION.—The 35 percent requirement of paragraph (1) shall apply for a fiscal year only to the extent that the percentage of the total amount of credit guarantees issued for that fiscal year under this section to promote the export to all countries of processed and high-value agricultural products is less than 25 percent."

**1992**—Subsecs. (a), (b). Pub. L. 102–511, §709(a)(1), inserted ", including processed agricultural products and high-value agricultural products," after "agricultural commodities".

Subsec. (c). Pub. L. 102–511, §708(a), inserted sentence at end.

Subsec. (d)(3). Pub. L. 102–511, §708(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "to assist countries, particularly developing countries, in meeting their food and fiber needs; and".

Subsec. (k). Pub. L. 102–511, §709(a)(2), added subsec. (k).

**1991**—Subsec. (i). Pub. L. 102–237 substituted "issued by the Commodity Credit Corporation under this section if it is determined by the Corporation, at the time of the assignment, that" for "or proceeds payable under a credit guarantee issued by the Commodity Credit Corporation under this section if it is determined by the Corporation that".

### CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

### REGULATIONS

Pub. L. 104–127, title II, §243(d), Apr. 4, 1996, 110 Stat. 967, provided that: "Not later than 180 days after the date of enactment of this Act [Apr. 4, 1996], the Secretary of Agriculture shall issue regulations to carry out the amendments made by this section [amending this section and sections 5602 and 5641 of this title]."

### PROMOTION OF AGRICULTURAL EXPORTS TO EMERGING MARKETS

Pub. L. 101–624, title XV, §1542, Nov. 28, 1990, 104 Stat. 3691, as amended by Pub. L. 102–237, title III, §338, Dec. 13, 1991, 105 Stat. 1859; Pub. L. 102–511, title VII, §706, Oct. 24, 1992, 106 Stat. 3350; Pub. L. 103–182, title III, §321(g), Dec. 8, 1993, 107 Stat. 2112; Pub. L. 104–127, title II, §5277(a), 278, Apr. 4, 1996, 110 Stat. 977, 979; Pub. L. 107–171, title III, §3203, May 13, 2002, 116 Stat. 300; Pub. L. 110–246, title III, §3204, June 18, 2008, 122 Stat. 1837; Pub. L. 113–79, title III, §3203, Feb. 7, 2014, 128 Stat. 779; Pub. L. 113–188, title I, §101(b), Nov. 26, 2014, 128 Stat. 2017; Pub. L. 115–334, title III, §33201(b)(3)(A), 3304, Dec. 20, 2018, 132 Stat. 4616, 4619, provided that:

"(a) FUNDING.—The Commodity Credit Corporation shall make available for fiscal years 1996 through 2023 not less than \$1,000,000,000 of direct credits or export credit guarantees for exports to emerging markets under section 201 or 202 of the Agricultural Trade Act of 1978 (7 U.S.C. 5621 and 5622), in addition to the amounts accrued or authorized under section 211 of the Act (7 U.S.C. 5641) for the program.

"(b) FACILITIES AND SERVICES.—

"(1) IN GENERAL.—A portion of such export credit guarantees shall be made available for—

"(A) the establishment or improvement of facilities, or

"(B) the provision of services or United States produced goods,

in emerging markets by United States persons to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities and products thereof if the Secretary of Agriculture determines that such guarantees will primarily promote the export of United States agricultural commodities (as defined in section 102(7) of the Agricultural Trade Act of 1978 [7 U.S.C. 5602(7)]).

"(2) PRIORITY.—The Commodity Credit Corporation shall give priority under this subsection to—

"(A) projects that encourage the privatization of the agricultural sector or that benefit private farms or cooperatives in emerging markets; and

"(B) projects for which nongovernmental persons agree to assume a relatively larger share of the costs.

"(3) CONSTRUCTION WAIVER.—The Secretary may waive any applicable requirements relating to the use of United States goods in the construction of a proposed facility, if the Secretary determines that—

"(A) goods from the United States are not available; or

"(B) the use of goods from the United States is not practicable.

"(4) TERM OF GUARANTEE.—A facility payment guarantee under this subsection shall be for a term that is not more than the lesser of—

"(A) the term of the depreciation schedule of the facility assisted; or

"(B) 20 years.

"(c) CONSULTATIONS.—Before the authority under this section is exercised, the Secretary of Agriculture shall consult with exporters of United States agricultural commodities (as defined in section 102(7) of the Agricultural Trade Act of 1978 [7 U.S.C. 5602(7)]), nongovernmental experts, and other Federal Government agencies in order to ensure that facilities in an emerging market for which financing is guaranteed under paragraph (1)(B) do not primarily benefit countries which are in close geographic proximity to that emerging market.

"(d) FOREIGN DEBT BURDEN.—In carrying out the program described in subsection (a), the Secretary of Agriculture shall ensure that the credits for which repayment is guaranteed under subsection (a) do not negatively affect the political and economic situation in emerging markets by excessively adding to the foreign debt burdens of such countries.

"(e) EMERGING MARKET.—In this section and section 1543 [7 U.S.C. 3293], the term 'emerging market' means any country, foreign territory, customs union, or other economic market that the Secretary determines—

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

"(2) has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities."

### PRESIDENTIAL DETERMINATION OF EMERGING DEMOCRACIES

Determination of President of the United States, No. 95–35, Aug. 10, 1995, 60 F.R. 44723, provided:

Pursuant to the authority vested in me by section 1542(f) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (7 U.S.C. 5622 note) (hereinafter "the Act"), I hereby determine that the following countries are taking the steps set forth in section 1542(f) of the Act to qualify as emerging democracies for purposes of that section:

Albania, Bangladesh, Belarus, Bosnia and Herzegovina, Bulgaria, Cambodia, Croatia, Czech Republic, Egypt, El Salvador, Estonia, the Former Yugoslav Republic of Macedonia, Ghana, Guatemala, Hungary, Jordan, Kazakhstan, Latvia, Lithuania, Morocco, Namibia, Nicaragua, Pakistan, Panama, the Philippines, Poland, Romania, Russia, Slovak Republic, Slovenia, South Africa, Tanzania, Tunisia, Ukraine, Yemen, and Zimbabwe.

In making this determination, I have considered the eligibility only of those countries for which programs are underway or currently contemplated by the Department of Agriculture.  
The Secretary of State is authorized and directed to publish this determination in the Federal Register.

WILLIAM J. CLINTON.

## §5623. Agricultural trade promotion and facilitation

### (a) Establishment

The Secretary shall carry out activities under this section—

- (1) to access, develop, maintain, and expand markets for United States agricultural commodities; and
- (2) to promote cooperation and the exchange of information.

### (b) Market Access Program

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

In this subsection, the term "eligible trade organization" means—

- (A) a United States agricultural trade organization or regional State-related organization that promotes the export and sale of United States agricultural commodities and that does not stand to profit directly from specific sales of United States agricultural commodities;
- (B) a cooperative organization or State agency that promotes the sale of United States agricultural commodities; or
- (C) a private organization that promotes the export and sale of United States agricultural commodities if the Secretary determines that such organization would significantly contribute to United States export market development.

#### (2) In general

The Commodity Credit Corporation shall establish and carry out a program, to be known as the "Market Access Program", to encourage the development, maintenance, and expansion of commercial export markets for United States agricultural commodities (including commodities that are organically produced (as defined in section 6502 of this title)) through cost-share assistance to eligible trade organizations that implement a foreign market development program.

#### (3) Participation requirements

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

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

- (i) prepare and submit a marketing plan to the Secretary that meets the guidelines governing such a marketing plan specified in this paragraph or otherwise established by the Secretary;
- (ii) meet any other requirements established by the Secretary; and
- (iii) enter into an agreement with the Secretary.

##### (B) Purpose of marketing plan

A marketing plan submitted under this paragraph shall describe the advertising or other market oriented export promotion activities to be carried out by the eligible trade organization with respect to which assistance under this subsection is being requested.

##### (C) Specific elements

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

- (i) specifically describe the manner in which assistance received by the eligible trade organization, in conjunction with funds and services provided by the eligible trade organization, will be expended in implementing the marketing plan;
- (ii) establish specific market goals to be achieved under the marketing plan; and
- (iii) contain whatever additional requirements are determined by the Secretary to be necessary.

##### (D) Branded promotion

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

##### (E) Amendments

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

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

#### (A) In general

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

#### (B) Limitation on branded promotion

Assistance provided under this subsection for activities described in paragraph (3)(D) shall not exceed 50 percent of the cost of implementing the marketing plan, except that the Secretary may determine not to apply such limitation in the case of United States agricultural commodities with respect to which there has been a favorable decision by the United States Trade Representative under section 2411 of title 19. Criteria used by the Secretary for determining that the limitation shall not apply shall be consistent and documented.

### (5) Other terms and conditions

#### (A) Multiyear basis

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

#### (B) Termination of assistance

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

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

#### (C) Evaluations

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

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

### (6) Restrictions on use of funds

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

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

### (7) Permissive use of funds

Assistance provided under this subsection to a United States agricultural trade association, cooperative, or small business may be used for individual branded promotional activity related to a United States branded product, if the beneficiaries of the activity have provided funds for the activity in an amount that is at least equivalent to the amount of such assistance.

### (8) Priority

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

### (9) Contribution level

#### (A) In general

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

#### (B) Increases in contribution level

The Secretary may increase the contribution level in any subsequent year that an eligible trade organization receives assistance for nonbranded promotion.

### (10) Additionality

The Secretary should require each participant in the Market Access Program to certify that any Federal funds received supplement, but do not supplant, private or third party participant funds or other contributions to Program activities.

### (11) Independent audits

If as a result of an evaluation or audit of activities of a participant under the Market Access Program, the Secretary determines that a further review is justified in order to ensure compliance with the requirements of the Program, the Secretary should require the participant to contract for an independent audit of the Program activities, including activities of any subcontractor.

### (12) Tobacco

No funds made available under the Market Access Program may be used for activities to develop, maintain, or expand foreign markets for tobacco.

### (c) Foreign Market Development Cooperator Program

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

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

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

#### (2) Establishment

The Secretary shall establish and, in cooperation with eligible trade organizations, carry out a program to be known as the "Foreign Market Development Cooperator Program" to maintain and develop foreign markets for United States agricultural commodities.

#### (3) Use of funds

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

- (A) cost-share assistance to an eligible trade organization under a contract or agreement with the eligible trade organization; and
- (B) assistance for other costs that are appropriate to carry out the Foreign Market Development Cooperator Program, including contingent liabilities that are not otherwise funded.

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

#### (1) Definition of emerging market

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

- (A) is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of its economy; and
- (B) has the potential to provide a viable and significant market for United States agricultural commodities.

#### (2) Establishment

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

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

### (3) Development of agricultural systems

#### (A) In general

##### (i) Implementation

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

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

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

**(ii) Extent of program**

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

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

The Secretary may implement subparagraph (A) by providing—

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

(ii) for necessary subsistence and transportation expenses of—

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

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

**(C) Cost-sharing**

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

**(D) Technical assistance**

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

**(E) Reports to Secretary**

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

**(F) Advisory committee**

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

**(G) Effect**

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

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

**(1) Establishment**

The Secretary of Agriculture shall establish an export assistance program, in this subsection referred to as the "program", to address existing or potential unique barriers that prohibit or threaten the export of United States specialty crops.

**(2) Purpose**

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

**(3) Priority**

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

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

**(4) Multiyear projects**

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

**(5) Outreach and technical assistance**

The Secretary shall—

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

**(6) Regulations and procedures**

**(A) In general**

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

**(B) Considerations**

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

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

**(7) Annual report**

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

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

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

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

(ii) the reason such funds were not obligated.

**(f) Funding and administration**

**(1) Commodity Credit Corporation**

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

**(2) Funding amount**

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

**(3) Allocation**

**(A) In general**

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

**(i) Market access program**

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

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

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

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

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

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

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

**(v) Priority trade fund**

**(I) In general**

In addition to the amounts allocated under clauses (i) through (iv), and notwithstanding any limitations in those clauses, as determined by the Secretary, for 1 or more programs under this section for authorized activities to access, develop, maintain, and expand markets for United States agricultural commodities, \$3,500,000 for each fiscal year.

**(II) Considerations**

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

**(B) Reallocation**

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

**(4) Cuba**

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

**(5) Authorization of appropriations**

In addition to any other amounts provided under this subsection, there are authorized to be appropriated such sums as are necessary to carry out the programs and authorities under paragraph (3)(A)(v) and subsections (b) through (e). (Pub. L. 95–501, title II, §203, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3674; amended Pub. L. 102–237, title III, §309, Dec. 13, 1991, 105 Stat. 1856; Pub. L. 103–66, title I, §1302(b)(1), Aug. 10, 1993, 107 Stat. 330; Pub. L. 103–465, title IV, §411(d), Dec. 8, 1994, 108 Stat. 4963; Pub. L. 104–127, title II, §244(a)(1), (b), Apr. 4, 1996, 110 Stat. 967, 968; Pub. L. 110–246, title III, §3102(a), June 18, 2008, 122 Stat. 1832; Pub. L. 115–334, title III, §3201(a), Dec. 20, 2018, 132 Stat. 4608.)

## REFERENCES IN TEXT

### PRIOR PROVISIONS

A prior section 203 of Pub. L. 95–501 enacted section 1707d of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

### AMENDMENTS

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

**2008**—Subsec. (a), Pub. L. 110–246 inserted "(including commodities that are organically produced (as defined in section 6502 of this title))" after "agricultural commodities".

**1996**—Pub. L. 104–127, §244(a)(1)(A), substituted "access" for "promotion" in section catchline.

Subsecs. (e)(2)(B), (f)(2)(B), (C), Pub. L. 104–127, §244(a)(1)(B), substituted "market access program" for "marketing promotion program".

Subsec. (f)(4), Pub. L. 104–127, §244(b), added par. (4).

**1994**—Subsec. (c), Pub. L. 103–465, §411(d)(1), struck out par. (1) designation and heading, redesignated subpars. (A) to (C) of former par. (1) as pars. (1) to (3), respectively, and realigned margins, and struck out former par. (2) which related to assistance to counter or offset adverse effects of subsidy, import quota, or other unfair trade practice of foreign country, except in the case of activities conducted by small entities operating through regional State-related organizations.

Subsec. (f)(2)(C) to (E), Pub. L. 103–465, §411(d)(2), inserted "or" at end of subpar. (C), redesignated subpar. (E) as (D), and struck out former subpar. (D) which read as follows: "The unfair trade practice that was the basis of the provision of assistance has been discontinued and marketing assistance is no longer required to offset its effects; or".

**1993**—Subsec. (c)(2), Pub. L. 103–66 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary shall provide export assistance under this section on a priority basis in the case of an unfair trade practice."

**1991**—Subsec. (g)(3), Pub. L. 102–237 substituted "November 28, 1990," for "the date of enactment of this Act".



## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date of entry into force of the WTO Agreement with respect to the United States (Jan. 1, 1995), except as otherwise provided, see section 451 of Pub. L. 103–465, set out as an Effective Date note under section 3601 of Title 19, Customs Duties.

## PROHIBITION ON ASSISTANCE TO MINK ASSOCIATIONS

Pub. L. 105–277, *div. A*, §101(a) [title VII, §718], Oct. 21, 1998, 112 Stat. 2681, 2681–27, as amended by Pub. L. 106–31, title V, §5001(b), May 21, 1999, 113 Stat. 109; Pub. L. 115–334, title III, §3201(b)(1)(D), Dec. 20, 2018, 132 Stat. 4616, provided that: "Hereafter, none of the funds made available in annual appropriations Acts may be used to provide assistance to, or to pay the salaries of personnel to carry out a market promotion/market access program pursuant to section 203(b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5623(b)) [that provides assistance to the United States Mink Export Development Council or any mink industry trade association]."

## SECRETARIAL ACTIONS TO ACHIEVE SAVINGS IN MARKET ACCESS PROGRAM; REGULATIONS

Pub. L. 103–66, title I, §1302(b), (c), Aug. 10, 1993, 107 Stat. 330, 331, as amended by Pub. L. 104–127, title II, §244(a)(2)(A)(ii), Apr. 4, 1996, 110 Stat. 968, which directed the Secretary of Agriculture to implement changes in the market access program beginning with fiscal year 1994 in order to improve the effectiveness of the program and to meet stated objectives, and required issuance of regulations not later than 90 days after Aug. 10, 1993, was repealed by Pub. L. 115–334, title III, §3201(b)(1)(E), Dec. 20, 2018, 132 Stat. 4616.

## §5624. Barter of agricultural commodities

### (a) In general

The Secretary or the Commodity Credit Corporation may provide eligible commodities in barter for foreign products under such terms and conditions as the Secretary or the Corporation shall prescribe.

### (b) Eligible commodities

Unless otherwise specified, eligible commodities shall include—

- (1) agricultural commodities acquired by the Commodity Credit Corporation through price support operations; and
- (2) agricultural commodities acquired by the Secretary or the Commodity Credit Corporation in the normal course of business and available for disposition.

### (c) Barter by exporters of agricultural commodities

#### (1) Purpose

The Secretary or the Commodity Credit Corporation shall encourage exporters of agricultural commodities to barter such commodities for foreign products—

- (A) to acquire such foreign products needed by such exporters; and
- (B) to develop, maintain, or expand foreign markets for United States agricultural exports.

#### (2) Eligible activities

The Secretary or the Commodity Credit Corporation may provide eligible commodities to exporters to assist such exporters in barter transactions.

#### (3) Technical assistance

The Secretary or the Commodity Credit Corporation shall provide technical advice and assistance relating to the barter of agricultural commodities to any United States exporter who requests such advice or assistance.

### (d) Transfer of foreign products to other Government agencies

The Secretary or the Commodity Credit Corporation may transfer any foreign products that the Secretary or such Corporation obtains through barter activities to other Government agencies if the Corporation receives assurances that it will receive full reimbursement from the agency within the same fiscal year in which such transfer occurs.

### (e) Corporation authority not limited

Nothing contained in this section shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such foreign materials as such Corporation determines appropriate in carrying out the functions and protecting the assets of the Corporation.

### (f) Prohibited activities

The Secretary or the Commodity Credit Corporation shall take reasonable precautions to prevent the misuse of eligible commodities in a barter or exchange program, including activities that—

- (1) displace or interfere with commercial sales of United States agricultural commodities that otherwise might be made;
- (2) unduly disrupt world prices of agricultural commodities or the normal patterns of commercial trade with recipient countries; or
- (3) permit the resale or transshipment of eligible commodities to countries other than the intended recipient country.

(Pub. L. 95–501, title II, §204, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3676; amended Pub. L. 102–237, title III, §320, Dec. 13, 1991, 105 Stat. 1857.)

## AMENDMENTS

1991—Subsec. (d). Pub. L. 102–237 amended heading and substituted "Government" for "government" in text.

## §5625. Combination of programs

The Commodity Credit Corporation may carry out a program under which commercial export credit guarantees available under section 5622 of this title are combined with direct credits from the Commodity Credit Corporation under section 5621 of this title to reduce the effective rate of interest on export sales of agricultural commodities.

(Pub. L. 95–501, title II, §205, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3677.)

## PART B—IMPLEMENTATION

## §5641. Funding levels

### (a) Direct credit programs

The Commodity Credit Corporation may make available for each fiscal year such funds of the Commodity Credit Corporation as it determines necessary to carry out any direct credit program established under section 5621 of this title.

### (b) Export credit guarantee program

The Commodity Credit Corporation shall make available for each fiscal year \$5,500,000,000 of credit guarantees under section 5622(a) of this title.

(Pub. L. 95–501, title II, §211, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3677; amended Pub. L. 103–66, title I, §1302(a), Aug. 10, 1993, 107 Stat. 330; Pub. L. 104–127, title II, §§243(b), 244(a)(2)(B), (c), Apr. 4, 1996, 110 Stat. 967, 968; Pub. L. 107–171, title III, §§3102(d), 3103, May 13, 2002, 116 Stat. 289; Pub. L. 110–246, title III, §§3101(b), 3102(b), June 18, 2008, 122 Stat. 1831, 1832; Pub. L. 113–79, title III, §§3101(b), 3102, Feb. 7, 2014, 128 Stat. 779; Pub. L. 115–334, title III, §3201(b)(1)(A), Dec. 20, 2018, 132 Stat. 4616.)

## AMENDMENTS

2018—Subsec. (c). Pub. L. 115–334 struck out subsec. (c) which related to funding for market access programs under section 5623 of this title and program priorities.

2014—Subsec. (b). Pub. L. 113–79, §3101(b), amended subsec. (b) generally. Prior to amendment, subsec (b) related to credit guarantees under section 5622(a) of this title for fiscal years 1996 to 2012.

Subsec. (c)(1)(A). Pub. L. 113–79, §3102, substituted "2018" for "2012".

2008—Subsec. (b). Pub. L. 110–246, §3101(b), added subsec. (b) and struck out former subsec. (b) which related to amount available for export credit guarantees for each of fiscal years 1996 through 2007 and limitation on amount of any origination fee.

Subsec. (c)(1)(A). Pub. L. 110–246, §3102(b), substituted "2008 through 2012" for "2006 and 2007".

2002—Subsec. (b)(1). Pub. L. 107–171, §3102(d), substituted "2007" for "2002".

Subsec. (c). Pub. L. 107–171, §3103, designated existing provisions as par. (1), inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), added subpar. (A) and struck out former subpar. (A) relating to funds available for market access activities authorized to be carried out by the Commodity Credit Corporation for fiscal years 1991 through 2002, and added par. (2).

1996—Subsec. (b). Pub. L. 104–127, §243(b), added subsec. (b) and struck out former subsec. (b) which authorized short and intermediate term export credit guarantees for each of fiscal years 1991 through 1995 and further provided for limitation on origination fees for short-term guarantees.

Subsec. (c). Pub. L. 104–127, §244(a)(2)(B)(i), (ii), substituted "Market access programs" for "Marketing promotion programs" in heading and "market access activities" for "marketing promotion activities" in introductory provisions.

Subsec. (c)(1). Pub. L. 104–127, §244(c), struck out "and" after "1993," and substituted "through 1995, and not more than \$90,000,000 for each of fiscal years 1996 through 2002," for "through 1997,".

Pub. L. 104–127, §244(a)(2)(B)(iii), substituted "market access program" for "market development program".

Subsec. (c)(2). Pub. L. 104–127, §244(a)(2)(B)(iv), substituted "market access program" for "marketing promotion program".

1993—Subsec. (c)(1). Pub. L. 103–66 substituted "through 1993, and not less than \$110,000,000 for each of the fiscal years 1994 through 1997," for "through 1995".

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–127, title II, §244(c), Apr. 4, 1996, 110 Stat. 968, provided that the amendment made by section 244(c) is effective Oct. 1, 1995.

## SUBCHAPTER III—BARRIERS TO EXPORTS

## §5651. Repealed. Pub. L. 110–246, title III, §3103(a), June 18, 2008, 122 Stat. 1832

Section, Pub. L. 95–501, title III, §301, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3678; amended Pub. L. 102–237, title III, §311, Dec. 13, 1991, 105 Stat. 1856; Pub. L. 102–511, title VII, §709(b), Oct. 24, 1992, 106 Stat. 3352; Pub. L. 103–465, title IV, §411(a)(3), (4), Dec. 8, 1994, 108 Stat. 4963; Pub. L. 104–127, title II, §245, Apr. 4, 1996, 110 Stat. 968; Pub. L. 107–171, title III, §3104(a), May 13, 2002, 116 Stat. 290, related to an export enhancement program and cash bonuses to exporters, users, and processors.

## EFFECTIVE DATE OF REPEAL

Repeal effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## §5652. Relief from unfair trade practices

### (a) Use of programs

#### (1) In general

The Secretary may, for each article described in paragraph (2), make available some or all of the commercial export promotion programs of the Department of Agriculture and the Commodity Credit Corporation to help mitigate or offset the effects of the unfair trade practice serving as the basis for the proceeding described in paragraph (2).

#### (2) Commodities specified

Paragraph (1) shall apply in the case of articles for which the United States has instituted, under any international trade agreement, any dispute settlement proceeding based on an unfair trade practice if such proceeding has been prevented from progressing to a decision by the refusal of the party maintaining the unfair trade practice to permit the proceeding to progress.

### (b) Consultations required

For any article described in subsection (a)(2), the Secretary shall—

- (1) promptly consult with representatives of the industry producing such articles and other allied groups or individuals regarding specific actions or the development of an integrated marketing strategy utilizing some or all of the commercial export programs of the Department of Agriculture and the Commodity Credit Corporation to help mitigate or offset the effects of the unfair trade practice identified in subsection (a)(2); and
- (2) ascertain and take into account the industry preference for the practical use of available commercial export promotion programs in implementing subsection (a)(1).

(Pub. L. 95–501, title III, §301, formerly §302, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3680; renumbered §301, Pub. L. 110–246, title III, §3103(b)(2), June 18, 2008, 122 Stat. 1832.)

#### PRIOR PROVISIONS

A prior section 301 of Pub. L. 95–501 was classified to section 5651 of this title prior to repeal by Pub. L. 110–246.

Another prior section 301 of Pub. L. 95–501 amended sections 1761, 1762, 1764, and 1765 of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

### §5653. Equitable treatment of high-value and value-added United States agricultural commodities

In the case of any program operated by the Secretary or the Commodity Credit Corporation during the fiscal years 1991 through 1995, for the purpose of discouraging unfair trade practices, the Secretary shall establish as an objective to expend annually at least 25 percent of the total funds available (or 25 percent of the value of any commodities employed) for program activities involving the export sales of high-value agricultural commodities and value-added products of United States agricultural commodities.

(Pub. L. 95–501, title III, §302, formerly §303, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3680; renumbered §302 and amended Pub. L. 110–246, title III, §3103(b)(2), (3), June 18, 2008, 122 Stat. 1832.)

#### PRIOR PROVISIONS

A prior section 302 of Pub. L. 95–501 was renumbered section 301 and is classified to section 5652 of this title.

#### AMENDMENTS

**2008**—Pub. L. 110–246, §3103(b)(3), struck out “, such as that established under section 5651 of this title,” after “any program”.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

### SUBCHAPTER IV—GENERAL PROVISIONS

#### PART A—PROGRAM CONTROLS

### §5661. Program controls for export programs

#### (a) Arrival certification

With respect to a commodity provided, or for which financing or a credit guarantee or other assistance is made available, under a program authorized in section 5621 or 5622 of this title, the Commodity Credit Corporation shall require the exporter of the commodity to maintain records of an official or customary commercial nature or other documents as the Secretary may require, and shall allow representatives of the Commodity Credit Corporation access to the records or documents as needed, to verify the arrival of the commodity in the country that is the intended destination of the commodity.

#### (b) Diversion

The unauthorized diversion of commodities under the programs authorized in sections 5621 and 5622 of this title is prohibited. The Commodity Credit Corporation shall establish procedures providing for the annual audit of a sufficient number of export transactions under such programs to ensure that the agricultural commodities that were the subject of such transactions arrived in the country of destination as provided in the sales agreement.

#### (c) Good faith

The failure of an exporter, seller or other person to comply with the provisions of this section shall not affect the validity of any credit guarantee or other obligation of the Commodity Credit Corporation under the programs under this chapter with respect to any exporter, seller, or person who had no knowledge of such failure to comply at the time such exporter, seller, or person was assigned the credit guarantee or at the time the Corporation entered into such obligation.

(Pub. L. 95–501, title IV, §401, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3680; amended Pub. L. 104–127, title II, §246, Apr. 4, 1996, 110 Stat. 969; Pub. L. 110–246, title III, §3103(b)(4), June 18, 2008, 122 Stat. 1832.)

#### PRIOR PROVISIONS

A prior section 401 of Pub. L. 95–501 enacted sections 1765a to 1765h and 1769 of this title, amended section 1766b of this title, and redesignated sections 1762(d), (f), and 1763, as sections 1766a to 1766c of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

#### AMENDMENTS

**2008**—Subsec. (a). Pub. L. 110–246, §3103(b)(4)(A), substituted “section 5621 or 5622” for “section 5621, 5622, or 5651”.

Subsec. (b). Pub. L. 110–246, §3103(b)(4)(B), substituted “sections 5621 and 5622” for “sections 5621, 5622, and 5651”.

**1996**—Subsec. (a). Pub. L. 104–127 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “With respect to commodities or other assistance provided, or for which financing or credit guarantees are made available, under the programs authorized in sections 5621, 5622, and 5651 of this title, the Commodity Credit Corporation shall—

“(1) require the exporter to maintain records of an official or customary commercial nature or other documents as the Secretary may require, and have access to such documents or records as needed to verify the arrival of agricultural commodities exported in connection with such programs in the countries that were the intended destination of such commodities; and

“(2) obtain certification from the seller or exporter of record of such commodities, that there were no corrupt payments or extra sales services, or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complied with applicable United States law.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

### §5662. Compliance provisions

#### (a) Records

##### (1) In general

In the administration of the programs established under sections 5621, 5622, and 5623(b) of this title the Secretary shall require by regulation each exporter or other participant under the program to maintain all records concerning a program transaction for a period of not to exceed 5 years after completion of the program transaction, and to permit the Secretary to have full and complete access, for such 5-year period, to such records.

##### (2) Confidentiality

The personally identifiable information contained in reports under subsection (a) may be withheld in accordance with section 552(b)(4) of title 5. Any officer or employee of the Department of Agriculture who knowingly discloses confidential information as defined by section 1905 of title 18 shall be subject to section 1905 of title 18. Nothing in this subsection shall be construed to authorize the withholding of information from Congress.

#### (b) Violation

If any exporter, assignee, or other participant has engaged in fraud with respect to the programs authorized under this chapter, or has otherwise violated program requirements under this chapter, the Commodity Credit Corporation may—

- (1) hold such exporter, assignee, or participant liable for any and all losses to the Corporation resulting from such fraud or violation;
- (2) require a refund of any assistance provided to such exporter, assignee, or participant plus interest, as determined by the Secretary; and
- (3) collect liquidated damages from such exporter, assignee, or participant in an amount determined appropriate by the Secretary.

The provisions of this subsection shall be without prejudice to any other remedy that is available under any other provision of law.

#### (c) Suspension and debarment

The Commodity Credit Corporation may suspend or debar for 1 or more years any exporter, assignee, or other participant from participation in one or more of the programs authorized by this chapter if the Corporation determines, after opportunity for a hearing, that such exporter, assignee, or other participant has violated the terms and conditions of the program or of this chapter and that the violation is of such a nature as to warrant suspension or debarment.

#### (d) False certifications

The provisions of section 1001 of title 18 shall apply to any false certifications issued under this chapter.

(Pub. L. 95–501, title IV, §402, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3681; amended Pub. L. 104–127, title II, §247, Apr. 4, 1996, 110 Stat. 969; Pub. L. 110–246, title III, §3103(b)(5), June 18, 2008, 122 Stat. 1833; Pub. L. 115–334, title III, §3201(b)(1)(B), Dec. 20, 2018, 132 Stat. 4616.)

#### AMENDMENTS

**2018**—Subsec. (a)(1). Pub. L. 115–334 substituted “and 5623(b)” for “and 5623”.

**2008**—Subsec. (a)(1). Pub. L. 110–246 substituted “sections 5621, 5622, and 5623” for “sections 5621, 5622, 5623, and 5651”.

**1996**—Subsec. (a)(2), (3). Pub. L. 104–127 redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “The Secretary may require by regulation an exporter or other participant in the programs to make records available to the Secretary with respect to non-program transactions if such records would pertain directly to the review of program-related transactions undertaken by such exporter or participant, as determined by the Secretary.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

### §5663. Departmental administration system

#### (a) In general

With respect to each commercial export promotion program of the Department of Agriculture or the Commodity Credit Corporation, the Secretary shall—

- (1) specify by regulation the criteria used to evaluate and approve proposals for that program;
- (2) establish a centralized system to permit the Foreign Agricultural Service to provide the history and current status of any proposal;
- (3) provide for regular audits of program transactions to determine compliance with program objectives and requirements; and
- (4) establish criteria to evaluate loans eligible for guarantees by the Commodity Credit Corporation, so as to ensure that the Corporation does not assume undue risk in providing such guarantees.

#### (b) Accessibility of information

Information pertaining to the status of a particular proposal shall be retrievable within the central system by appropriate categories, as determined appropriate by the Secretary.

(Pub. L. 95–501, title IV, §403, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3682.)

### §5664. Repealed. Pub. L. 104–127, title II, §248, Apr. 4, 1996, 110 Stat. 969

Section, Pub. L. 95–501, title IV, §404, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3682; amended Pub. L. 102–237, title III, §312, Dec. 13, 1991, 105 Stat. 1856, related to regulations to implement export promotion provisions.

### PART B—MISCELLANEOUS PROVISIONS



## §5671. Agricultural embargo protection

### (a) Prerequisites; scope of compensation

Notwithstanding any other provision of law, if—

- (1) the President or other member of the executive branch of the Federal Government causes the export of any agricultural commodity to any country or area of the world to be suspended or restricted for reasons of national security or foreign policy under the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) <sup>1</sup> or under any other provision of law;
- (2) such suspension or restriction of the export of such agricultural commodity is imposed other than in connection with a suspension or restriction of all exports from the United States to such country or area of the world; and
- (3) sales of such agricultural commodity for export from the United States to such country or area of the world during the year preceding the year in which the suspension or restriction is imposed exceeds 3 percent of the total sales of such commodity for export from the United States to all foreign countries during the year preceding the year in which the suspension or restriction is in effect;

the Secretary shall compensate producers of the commodity involved by making payments available to such producers, as provided in subsection (b) of this section.

### (b) Amount of payments

If the Secretary makes payments available to producers under subsection (a), the amount of such payment shall be determined—

- (1) in the case of an agricultural commodity for which payments are authorized to be made to producers under Title I of the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.), by multiplying—
  - (A) the farm program payment yield for the producer or the yield established for the farm for the commodity involved; by
  - (B) the crop acreage base established for the commodity; by
  - (C) the amount by which the average market price per unit of such commodity received by producers during the 60-day period immediately following the date of the imposition of the suspension or restriction is less than 100 percent of the parity price for such commodity, as determined by the Secretary on the date of the imposition of the suspension or restriction; or
- (2) in the case of other agricultural commodities for which price support is authorized for producers under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), by multiplying the amount by which the average market price per unit of such commodity received by the producers during the 60-day period immediately following the date of the imposition of the suspension or restriction is less than 100 percent of the parity price for such commodity, as determined by the Secretary on the date of the imposition of the suspension or restriction, by the quantity of such commodity sold by the producer during the period that the suspension or restriction is in effect.

### (c) Time for payments

Payments under paragraph (1) of subsection (b) shall be made for each marketing year or part thereof during which the suspension or restriction is in effect and shall be made in equal amounts at 90-day intervals, beginning 90 days after the date of the imposition of the suspension or restriction.

### (d) Commodity Credit Corporation

The Secretary shall use the Commodity Credit Corporation in carrying out the provisions of this section.

### (e) Regulations

The Secretary may issue such regulations as are determined necessary to carry out this section.

(Pub. L. 95–501, title IV, §411, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3682.)

## REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a)(1), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to section 2401 et seq. of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as chapter 56 (§4601 et seq.) of Title 50, and was repealed by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232, except for sections 11A, 11B, and 11C thereof (50 U.S.C. 4611, 4612, 4613).

The Agricultural Act of 1949, referred to in subsec. (b)(1), (2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of this title. Title I of the Act is classified generally to subchapter II (§1441 et seq.) of chapter 35A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

<sup>1</sup> See References in Text note below.

## §5672. Development of plans to alleviate adverse impact of embargoes

To alleviate, to the maximum extent possible, the adverse impact on farmers, elevator operators, common carriers, and exporters of agricultural commodities of the President or other member of the executive branch of the Federal Government causing the export of any agricultural commodity to any country or area of the world to be suspended or restricted, the Secretary of Agriculture shall—

- (1) develop a comprehensive contingency plan that shall include—
  - (A) an assessment of existing farm programs with a view to determining whether such programs are sufficiently flexible to enable the Secretary to efficiently and effectively offset the adverse impact of such a suspension or restriction on farmers, elevator operators, common carriers, and exporters of commodities provided for under such programs;
  - (B) an evaluation of the kinds and availability of information needed to determine, on an emergency basis, the extent and severity of the impact of such a suspension or restriction on producers, elevator operators, common carriers, and exporters; and
  - (C) the development of criteria for determining the extent, if any, to which the impact of such a suspension or restriction should be offset in the case of each of the sectors referred to in paragraph (1)(B);
- (2) for any suspension or restriction for which compensation is not provided under section 5671 of this title, prepare and submit to the appropriate Committees of Congress such recommendations for changes in existing agricultural programs, or for new programs, as the Secretary considers necessary to handle effectively, efficiently, economically, and fairly the impact of any such suspension or restriction;
- (3) for any suspension or restriction for which compensation is provided under section 5671 of this title, prepare and submit to the appropriate Committees of Congress a plan for implementing and administering section 5671 of this title; and
- (4) require the Commodity Credit Corporation, prior to such Corporation purchasing any contracts for the purpose of offsetting the impact of a commodity suspension or restriction, to—
  - (A) prepare an economic justification for each commodity involved in the suspension or restriction to determine if such a purchase is necessary;
  - (B) estimate any suspension- or restriction-related benefits and detrimental effects to the exporters, and use both estimates in determining the extent, if any, Federal assistance is needed; and
  - (C) limit its purchases to only those types and grades of commodities suspended or restricted from shipment and make such purchases at prices at or near the current market prices.

(Pub. L. 95–501, title IV, §412, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3684.)

## §5673. Contracting authority to expand agricultural export markets

### (a) In general

The Secretary may contract with individuals for services to be performed outside the United States as the Secretary determines necessary or appropriate for carrying out programs and activities to maintain, develop, or enhance export markets for United States agricultural commodities and products.

### (b) Not employees of United States

Individuals referred to in subsection (a) shall not be regarded as officers or employees of the United States.

(Pub. L. 95–501, title IV, §413, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3685.)

## §5674. Trade consultations concerning imports

### (a) Consultation between agencies

The Secretary shall require consultation between the Administrator of the Service and the heads of other appropriate agencies and offices of the Department of Agriculture, including the Administrator of the Animal and Plant Health Inspection Service, prior to relaxing or removing any restriction on the importation of any agricultural commodity into the United States.

### (b) Consultation with Trade Representative

The Secretary shall consult with the United States Trade Representative prior to relaxing or removing any restriction on the importation of any agricultural commodity or a product thereof into the United States.

### (c) Monitoring compliance with sanitary and phytosanitary measures

The Secretary shall monitor the compliance of World Trade Organization member countries with the sanitary and phytosanitary measures of the Agreement on Agriculture of the Uruguay Round of Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade. If the Secretary has reason to believe that any country may have failed to meet the commitment on sanitary and phytosanitary measures under the Agreement in a manner that adversely impacts the exports of a United States agricultural commodity, the Secretary shall—

- (1) provide such information to the United States Trade Representative of the circumstances surrounding the matter arising under this subsection; and
- (2) with respect to any such circumstances that the Secretary considers to have a continuing adverse effect on United States agricultural exports, report to the Committee on Agriculture, and the Committee on Ways and Means, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Finance, of the Senate—
  - (A) that a country may have failed to meet the sanitary and phytosanitary commitments; and
  - (B) any notice given by the Secretary to the United States Trade Representative.

(Pub. L. 95–501, title IV, §414, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3685; amended Pub. L. 104–127, title II, §242(b), Apr. 4, 1996, 110 Stat. 965.)

## AMENDMENTS

1996—Subsec. (c). Pub. L. 104–127 added subsec. (c).

## §5675. Technical assistance in trade negotiations

The Secretary shall provide technical services to the United States Trade Representative on matters pertaining to agricultural trade and with respect to international negotiations on issues related to agricultural trade.

(Pub. L. 95–501, title IV, §415, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3685.)

## §5676. Limitation on use of certain export promotion programs

### (a) In general

The Secretary may provide that a person shall be ineligible for participation in an export program established under title I of the Food for Peace Act [7 U.S.C. 1701 et seq.], or in any other export credit, credit guarantee, bonus, or other export program carried out through, or administered by, the Commodity Credit Corporation or carried out with funds made available pursuant to section 612c of this title with respect to the export of any agricultural commodity or product that has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 1313(j)(2) of title 19, of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

### (b) Vegetable oil

A person shall be ineligible for participation in any of the export programs referred to in subsection (a) with respect to the export of vegetable oil or a vegetable oil product that has been or will be used as the basis for a claim of a refund, as a drawback, pursuant to section 1313 of title 19, of any duty, tax, or fee imposed under Federal law on an imported commodity or product.

### (c) Certification

If the Secretary takes action under the authority granted under subsection (a), a person applying to export any agricultural commodity under the export programs referred to in subsection (a) shall certify that none of the commodity has been or will be used as the basis of a claim for any refund specified in subsection (a), except that regardless of whether the Secretary takes action under the authority granted under subsection (a), a person applying to export any vegetable oil or vegetable oil product under such programs shall certify that none of the vegetable oil or vegetable oil product has been or will be used as the basis of a claim for any refund specified in subsection (b).

### (d) Regulations

The Secretary shall promulgate regulations to carry out this section.

### (e) Applicability

This section shall not apply to quantities of agricultural commodities and products with respect to which an exporter has entered into a contract, prior to November 28, 1990, for an export sale.

(Pub. L. 95–501, title IV, §416, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3685; amended Pub. L. 102–237, title III, §313, Dec. 13, 1991, 105 Stat. 1856; Pub. L. 110–246, title III, §3001(b)(1)(A), (2)(K), June 18, 2008, 122 Stat. 1820.)

## REFERENCES IN TEXT

The Food for Peace Act, referred to in subsec. (a), is act July 10, 1954, ch. 469, 68 Stat. 454. Title I of the Act is classified generally to subchapter II (§1701 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of this title and Tables.

## AMENDMENTS

**2008**—Subsec. (a). Pub. L. 110–246 substituted "Food for Peace Act" for "Agricultural Trade Development and Assistance Act of 1954".

**1991**—Subsec. (e). Pub. L. 102–237 substituted "November 28, 1990" for "the effective date of this section".

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## §5677. Trade compensation and assistance programs

### (a) In general

Except as provided in subsection (f), notwithstanding any other provision of law, if, after April 4, 1996, the President or any other member of the executive branch causes exports from the United States to any country to be unilaterally suspended for reasons of national security or foreign policy, and if within 90 days after the date on which the suspension is imposed on United States exports no other country with an agricultural economic interest agrees to participate in the suspension, the Secretary shall carry out a trade compensation assistance program in accordance with this section (referred to in this section as a "program").

### (b) Compensation or provision of funds

Under a program, the Secretary shall, based on an evaluation by the Secretary of the method most likely to produce the greatest compensatory benefit for producers of the commodity involved in the suspension—

(1) compensate producers of the commodity by making payments available to producers, as provided by subsection (c)(1); or

(2) make available an amount of funds calculated under subsection (c)(2), to promote agricultural exports or provide agricultural commodities to developing countries under any authorities available to the Secretary.

### (c) Determination of amount of compensation or funds

#### (1) Compensation

If the Secretary makes payments available to producers under subsection (b)(1), the amount of the payment shall be determined by the Secretary based on the Secretary's estimate of the loss suffered by producers of the commodity involved due to any decrease in the price of the commodity as a result of the suspension.

#### (2) Determination of amount of funds

For each fiscal year of a program, the amount of funds made available under subsection (b)(2) shall be equal to 90 percent of the average annual value of United States agricultural exports to the country with respect to which exports are suspended during the most recent 3 years prior to the suspension for which data are available.

### (d) Duration of program

For each suspension of exports for which a program is implemented under this section, funds shall be made available under subsection (b) for each fiscal year or part of a fiscal year for which the suspension is in effect, but not to exceed 3 fiscal years.

### (e) Commodity Credit Corporation

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

### (f) Exception to carrying out program

This section shall not apply to any suspension of trade due to a war or armed hostility.

### (g) Partial year embargoes

If the Secretary makes funds available under subsection (b)(2), regardless of whether an embargo is in effect for only part of a fiscal year, the full amount of funds as calculated under subsection (c)(2) shall be made available under a program for the fiscal year. If the Secretary determines that making the required amount of funds available in a partial fiscal year is impracticable, the Secretary may make all or part of the funds required to be made available in the following fiscal year (in addition to any funds otherwise required under a program to be made available in the following fiscal year).

### (h) Short supply embargoes

If the President or any other member of the executive branch causes exports to be suspended based on a determination of short supply, the Secretary shall carry out section 1310 of this title.

(Pub. L. 95–501, title IV, §417, as added Pub. L. 104–127, [title II, §249, Apr. 4, 1996](#), 110 Stat. 969.)

## §5678. Edward R. Madigan United States Agricultural Export Excellence Award

### (a) Findings

Congress finds that—

(1) United States producers of agricultural products are some of the most productive and efficient producers of agricultural products in the world;

(2) continued growth and expansion of markets for United States agricultural exports is crucial to the continued development and economic well-being of rural areas of the United States and the agricultural sector of the United States economy;

(3) in recent years, United States agricultural exports have steadily increased, surpassing \$54,000,000,000 in value in 1995;

(4) as United States agricultural producers move toward a market-oriented system in which planting and other decisions by producers are driven by national and international market signals, developing new and expanding agricultural export markets is vital to maintaining a vibrant and healthy agricultural sector and rural economy; and

(5) a United States agricultural export excellence award will increase United States agricultural exports by—

(A) identifying efforts of United States entities to develop and expand markets for United States agricultural exports through the development of new products and services and through the use of innovative marketing techniques;

(B) recognizing achievements of those who have exhibited or supported entrepreneurial efforts to expand and create new markets for United States agricultural exports or increase the volume or value of United States agricultural exports; and

(C) disseminating information on successful methods used to develop and expand markets for United States agricultural exports.

### (b) Establishment

There is established the Edward R. Madigan United States Agricultural Export Excellence Award, which shall be evidenced by a medal bearing the inscription "Edward R. Madigan United States Agricultural Export Excellence Award". The medal shall be of such design and materials and bear such additional inscriptions as the Secretary of Agriculture (referred to in this section as the "Secretary") may prescribe.

### (c) Selection of recipient

The President or the Secretary (on the basis of recommendations received from the board established under subsection (h)) shall periodically provide the award to companies and other entities that in the judgment of the President or the Secretary substantially encourage entrepreneurial efforts in the food and agriculture sector for advancing United States agricultural exports.

### (d) Presentation of award

The presentation of the award shall be made by the President or the Secretary with such ceremonies as the President or the Secretary considers proper.

### (e) Publication of award

An entity to which an award is made under this section may publicize the receipt of the award by the entity and use the award in advertising of the entity.

### (f) Categories for which award may be given

Separate awards shall be made to qualifying entities in each of the following categories:

(1) Development of new products or services for agricultural export markets.

(2) Development of new agricultural export markets.

(3) Creative marketing of products or services in agricultural export markets.

### (g) Criteria for qualification

An entity may qualify for an award under this section only if the entity—

(1)(A) applies to the board established under subsection (h) in writing for the award; or

(B) is recommended for the award by a Governor of a State;

(2)(A) has exhibited significant entrepreneurial effort to create new markets for United States agricultural exports or increase United States agricultural exports; or

(B) has provided significant assistance to others in an effort to create new markets for United States agricultural exports or increase United States agricultural exports;

(3) has not received another award in the same category under subsection (f) during the preceding 5-year period; and

(4) meets such other requirements and specifications as the Secretary determines are appropriate to achieve the objectives of this section.

### (h) Board

#### (1) Selection

The Secretary shall appoint a board of evaluators, consisting of at least 5 individuals from the private sector selected for their knowledge and experience in exporting United States agricultural products.

#### (2) Meetings

The board shall meet at least once annually to review and evaluate all applicants and entities recommended by States under subsection (g)(1).

#### (3) Recommendations of board

The board shall report its recommendations concerning the making of the award to the Secretary.

#### (4) Term

Each member of the board may serve a term of not to exceed 3 years.

### (i) Funding

The Secretary may seek and accept gifts from public and private sources to carry out this section.

(Pub. L. 104–127, [title II, §261, Apr. 4, 1996](#), 110 Stat. 972.)

## CODIFICATION

Section was enacted as part of the Federal Agriculture Improvement and Reform Act of 1996, and not as part of the Agricultural Trade Act of 1978 which comprises this chapter.

## §5679. Biotechnology and agricultural trade program

### (a) Establishment

There is established in the Department the biotechnology and agricultural trade program.

### (b) Purpose

The purpose of the program shall be to remove, resolve, or mitigate significant regulatory nontariff barriers to the export of United States agricultural commodities (as defined in section 5602 of this title) into foreign markets through public and private sector projects funded by grants that address—

(1) quick response intervention regarding nontariff barriers to United States exports involving—

(A) United States agricultural commodities produced through biotechnology or new agricultural production technologies;

(B) food safety;

(C) disease; or

(D) other sanitary or phytosanitary concerns; or

(2) developing protocols as part of bilateral negotiations with other countries on issues such as animal health, grain quality, and genetically modified commodities.

### (c) Eligible programs

Depending on need, as determined by the Secretary, activities authorized under this section may be carried out through—

(1) this section;

(2) the emerging markets program under section 1542<sup>1</sup> and section 5623(d) of this title; or

(3) the Cochran Fellowship Program under section 3293 of this title.

### (d) Funding

There is authorized to be appropriated \$2,000,000 for each of fiscal years 2019 through 2023.

(Pub. L. 101–624, title XV, §1543A, as added Pub. L. 107–171, [title III, §3204, May 13, 2002](#), 116 Stat. 300; amended Pub. L. 115–334, [title III, §§3201\(b\)\(3\)\(C\), 3301, Dec. 20, 2018](#), 132 Stat. 4617.)

## REFERENCES IN TEXT

Section 1542, referred to in subsec. (c)(2), is section 1542 of title XV of Pub. L. 101–624, which is set out as a note under section 5622 of this title.

## CODIFICATION

Section was enacted as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Agricultural Trade Act of 1978 which comprises this chapter.

## AMENDMENTS

**2018**—Subsec. (b)(1)(A). Pub. L. 115–334, §3301(1), inserted "or new agricultural production technologies" after "biotechnology".

Subsec. (c)(2). Pub. L. 115–334, §3201(b)(3)(C), inserted "and section 5623(d) of this title" after "section 1542".

Subsec. (d). Pub. L. 115–334, §3301(2), substituted "\$2,000,000 for each of fiscal years 2019 through 2023" for "\$6,000,000 for each of fiscal years 2002 through 2007".

<sup>1</sup> See *References in Text* note below.

### **§5680. Repealed.** Pub. L. 115–334, title III, §3201(b)(4), Dec. 20, 2018, 132 Stat. 4617

Section, Pub. L. 107–171, title III, §3205, May 13, 2002, 116 Stat. 301; Pub. L. 110–246, title III, §3203, June 18, 2008, 122 Stat. 1837; Pub. L. 113–79, title III, §3205(a), (b), Feb. 7, 2014, 128 Stat. 780, related to program to provide direct and technical assistance to remove, resolve, or mitigate sanitary and phytosanitary and technical barriers that prohibit or threaten the export of United States specialty crops.

## SUBCHAPTER V—FOREIGN AGRICULTURAL SERVICE

### **§5691. Repealed.** Pub. L. 103–354, title II, §225(e)(1), Oct. 13, 1994, 108 Stat. 3214

Section, Pub. L. 95–501, title V, §501, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3686, established position of Under Secretary of Agriculture for International Affairs and Commodity Programs.

A prior section 501 of Pub. L. 95–501 enacted section 2211a of this title, amended section 5314 of Title 5, Government Organization and Employees, and enacted provisions set out as a note under section 2211a of this title, prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

### **§5692. Administrator of Foreign Agricultural Service**

#### **(a) Establishment**

There is hereby established in the Department of Agriculture the position of Administrator of the Foreign Agricultural Service.

#### **(b) Duties**

The Administrator of the Foreign Agricultural Service is authorized to exercise such functions and perform such duties related to foreign agriculture, and shall perform such other duties, as may be required by law or prescribed by the Secretary of Agriculture.

#### **(c) Use of Service**

In carrying out the duties under this section, the Administrator shall oversee the operations of the Foreign Agricultural Service, the General Sales Manager, and the Agricultural Attaché Service.

(Pub. L. 95–501, title V, §502, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3686.)

### **§5693. Duties of Foreign Agricultural Service**

The Service shall assist the Secretary in carrying out the agricultural trade policy and international cooperation policy of the United States by—

- (1) acquiring information pertaining to agricultural trade;
- (2) carrying out market promotion and development activities;
- (3) providing agricultural technical assistance and training; and
- (4) carrying out the programs authorized under this chapter, the Food for Peace Act (7 U.S.C. 1691 et seq.), and other Acts.

(Pub. L. 95–501, title V, §503, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3686; amended Pub. L. 104–127, title II, §250, Apr. 4, 1996, 110 Stat. 971; Pub. L. 110–246, title III, §3001(b)(1)(A), (2)(K), June 18, 2008, 122 Stat. 1820.)

## REFERENCES IN TEXT

The Food for Peace Act, referred to in par. (4), is act July 10, 1954, ch. 469, 68 Stat. 454, which is classified generally to chapter 41 (§1691 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of this title and Tables.

## AMENDMENTS

**2008**—Par. (4). Pub. L. 110–246 substituted "Food for Peace Act" for "Agricultural Trade Development and Assistance Act of 1954".

**1996**—Pub. L. 104–127 substituted "Duties" for "Establishment" in section catchline and amended text generally. Prior to amendment, text read as follows: "The Service shall assist the Secretary in carrying out the agricultural trade policy of the United States by acquiring information pertaining to agricultural trade, carrying out market promotion and development activities, and implementing the programs authorized in this chapter, the Agricultural Trade Development and Assistance Act of 1954, and other Acts."

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

## STUDY ON FEE FOR SERVICES

Pub. L. 107–171, title III, §3208, May 13, 2002, 116 Stat. 302, provided that:

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [May 13, 2002], the Secretary of Agriculture shall submit to the Committee on Agriculture, and the Committee on International Relations [now Committee on Foreign Affairs], of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate a report on the feasibility of instituting a program under which the Secretary would charge and retain a fee to cover the costs incurred by the Department of Agriculture, acting through the Foreign Agricultural Service or any successor agency, in providing persons with commercial services provided outside the United States.

"(b) PURPOSE OF PROGRAM.—The purpose of a program described in subsection (a) would be to supplement and not replace any services currently offered overseas by the Foreign Agricultural Service.

"(c) MARKET DEVELOPMENT STRATEGY.—A program under subsection (b) would be part of an overall market development strategy for a particular country or region.

"(d) PILOT PROGRAM.—A program under subsection (a) would be established on a pilot basis to ensure that the program does not disadvantage small- and medium-sized companies, including companies that have never engaged in exporting."

### **§5694. Staff of Foreign Agricultural Service**

#### **(a) Personnel of Service**

To ensure that the agricultural export programs of the United States are carried out in an effective manner, the authorized number of personnel for the Service shall not be less than 900 staff years each fiscal year.

#### **(b) Rank of Foreign Agricultural Service officers in foreign missions**

Notwithstanding any other provision of law, the Secretary of State shall, on the request of the Secretary of Agriculture, accord the diplomatic title of Minister-Counselor to the senior Service officer assigned to any United States mission abroad. The number of Service officers holding such diplomatic title at any time may not exceed twelve.

(Pub. L. 95–501, title V, §504, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3686.)

## PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section appear in the following appropriation acts:

Pub. L. 101–506, title IV, Nov. 5, 1990, 104 Stat. 1343.

Pub. L. 100–202, §101(k) [title IV, §401], Dec. 22, 1987, 101 Stat. 1329–322, 1329–350.

## LANGUAGE PROFICIENCY AND EVALUATION OF FOREIGN AGRICULTURAL SERVICE OFFICERS

Pub. L. 101–624, title XV, §1556, Nov. 28, 1990, 104 Stat. 3698, as amended by Pub. L. 104–127, title II, §281(b), Apr. 4, 1996, 110 Stat. 980, provided that:

"(a) ASSESSMENT OF FOREIGN LANGUAGE COMPETENCE.—The Foreign Agricultural Service shall revise its evaluation reports for its Foreign Service officers so as to require in a separate entry an assessment of the officer's effectiveness in using, in his or her work, a foreign language or foreign languages tested at the General Professional Speaking Proficiency level or above, in cases where the supervisor is capable of making such an assessment.

"(b) PRECEDENCE IN PROMOTION.—The Director of Personnel of the Foreign Agricultural Service shall instruct promotion panels to take account of language ability and, all criteria for promotion otherwise being equal, to give precedence in promotions to officers who have achieved at least the General Professional Speaking Proficiency level in 1 or more foreign languages over officers who lack that level of proficiency."

### **§5695. Authorization of appropriations**

There are hereby authorized to be appropriated for the Service such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 95–501, title V, §505, formerly §506, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3687; renumbered §505, Pub. L. 102–237, title III, §314, Dec. 13, 1991, 105 Stat. 1856.)

## SUBCHAPTER VI—REPORTS

### **§5711. Repealed.** Pub. L. 104–127, title II, §241(c)(1), Apr. 4, 1996, 110 Stat. 964

Section, Pub. L. 95–501, title VI, §601, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3687; amended Pub. L. 102–237, title III, §315, Dec. 13, 1991, 105 Stat. 1856, required Secretary to periodically prepare long-term agricultural trade strategy reports.

### **§5712. Export reporting and contract sanctity**

#### **(a) Export sales reports**

##### **(1) In general**

All exporters of wheat and wheat flour, feed grains, oil seeds, cotton, pork, beef, and products thereof, and other commodities that the Secretary may designate produced in the United States shall report to the Secretary of Agriculture, on a weekly basis, the following information regarding any contract for export sales entered into or subsequently modified in any manner during the reporting period:

(A) type, class, and quantity of the commodity sought to be exported;

(B) the marketing year of shipment; and

(C) destination, if known.

**(2) Confidentiality and compilation of reports**

Individual reports shall remain confidential but shall be compiled by the Secretary and published in compilation form each week following the week of reporting.

**(3) Immediate reporting**

All exporters of agricultural commodities produced in the United States shall, upon request of the Secretary, immediately report to the Secretary any information with respect to export sales of agricultural commodities and at such times as the Secretary may request. When the Secretary requires that such information be reported by exporters on a daily basis, the information compiled from individual reports shall be made available to the public daily.

**(4) Monthly reporting permitted**

The Secretary may, with respect to any commodity or type or class thereof during any period in which the Secretary determines that—

- (A) there is a domestic supply of such commodity substantially in excess of the quantity needed to meet domestic requirements,
- (B) total supplies of such commodity in the exporting countries are estimated to be in surplus,
- (C) anticipated exports will not result in excessive drain on domestic supplies, and
- (D) to require the reports to be made will unduly hamper export sales,

provide for such reports by exporters and publishing of such data to be on a monthly basis rather than on a weekly basis.

**(b) Failure to report**

Any person who knowingly fails to make any report required under this section shall be fined not more than \$25,000 or imprisoned for not more than 1 year, or both.

**(c) Contract sanctity**

Notwithstanding any other provision of law, the President shall not prohibit or curtail the export of any agricultural commodity under an export sales contract—

- (1) that is entered into before the President announces an action that would otherwise prohibit or curtail the export of the commodity, and
- (2) the terms of which require delivery of the commodity within 270 days after the date of the suspension of trade is imposed,

except that the President may prohibit or curtail the export of any agricultural commodity during a period for which the President has declared a national emergency or for which the Congress has declared war.

(Pub. L. 95–501, title VI, §602, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3688; amended Pub. L. 102–237, title III, §327, Dec. 13, 1991, 105 Stat. 1858; Pub. L. 106–78, title IX, §921, Oct. 22, 1999, 113 Stat. 1206; Pub. L. 111–239, §2(c), Sept. 27, 2010, 124 Stat. 2502.)

**AMENDMENT OF SECTION**

For termination of amendment by section 942 of Pub. L. 106–78, see Termination Date of 1999 Amendment note below.

**PRIOR PROVISIONS**

A prior section 602 of Pub. L. 95–501 enacted section 1765b–1 of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

**AMENDMENTS**

**2010**—Subsec. (a)(1). Pub. L. 111–239 substituted "cotton, pork," for "cotton,".

**1999**—Subsec. (a)(1). Pub. L. 106–78, §§921, 942, temporarily inserted ", beef," after "cotton" in introductory provisions. See Termination Date of 1999 Amendment note below.

**1991**—Subsec. (a)(1). Pub. L. 102–237, §327(1), substituted "designate produced" for "designate as produced" in introductory provisions.

Subsec. (a)(2). Pub. L. 102–237, §327(2), struck out "in accordance with subsection (c)" after "shall remain confidential".

**TERMINATION DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–78 to terminate Sept. 30, 2020, see section 942 of Pub. L. 106–78, as amended, set out in a Livestock Mandatory Reporting note under section 1635 of this title.

**§5713. Repealed. Pub. L. 113–188, title I, §101(d), Nov. 26, 2014, 128 Stat. 2017**

Section, Pub. L. 95–501, title VI, §603, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3689; amended Pub. L. 104–127, title II, §§241(c)(2), 251, Apr. 4, 1996, 110 Stat. 964, 971; Pub. L. 110–246, title III, §3001(b)(1)(A), (2)(K), June 18, 2008, 122 Stat. 1820, required quarterly reports specifying the cumulative amount of export assistance provided by the Commodity Credit Corporation and the Secretary under certain programs.

**SUBCHAPTER VII—FOREIGN MARKET DEVELOPMENT COOPERATOR PROGRAM**

**§§5721 to 5723. Repealed. Pub. L. 115–334, title III, §3201(b)(2), Dec. 20, 2018, 132 Stat. 4616**

Section 5721, Pub. L. 95–501, title VII, §701, as added Pub. L. 104–127, title II, §252, Apr. 4, 1996, 110 Stat. 971, defined "eligible trade organization" for this subchapter.

Section 5722, Pub. L. 95–501, title VII, §702, as added Pub. L. 104–127, title II, §252, Apr. 4, 1996, 110 Stat. 971; amended Pub. L. 107–171, title III, §3105(a), May 13, 2002, 116 Stat. 290; Pub. L. 110–246, title III, §3104(a), June 18, 2008, 122 Stat. 1833; Pub. L. 113–188, title I, §101(f), Nov. 26, 2014, 128 Stat. 2018, related to foreign market development cooperator program to maintain and develop foreign markets for United States agricultural commodities and products.

Section 5723, Pub. L. 95–501, title VII, §703, as added Pub. L. 104–127, title II, §252, Apr. 4, 1996, 110 Stat. 972; amended Pub. L. 107–171, title III, §3105(b), May 13, 2002, 116 Stat. 291; Pub. L. 110–246, title III, §3104(b), June 18, 2008, 122 Stat. 1833; Pub. L. 113–79, title III, §3103, Feb. 7, 2014, 128 Stat. 779, related to funding to carry out this subchapter and program priorities.