

United States Senate
WASHINGTON, DC 20510

October 1, 2007

The Honorable Chuck Conner
Acting Secretary of Agriculture
200-A Jamie L. Whitten Building
Washington, D.C. 20250

Dear Acting Secretary Conner:

The Department of Agriculture is considering whether to revise the regulation at 7 CFR part 1485 for the purpose of improving the effectiveness of the Market Access Program (MAP). There are several issues that should be brought to your attention as you weigh whether to engage in a formal revision of the current MAP regulations.

In particular, USDA should provide greater clarity through regulations regarding the circumstances under which an entity may be excluded from participation in the MAP program under section 203(f)(2)(D) of the Agricultural Trade Act of 1978. That section gives the Secretary broad authority to terminate federal assistance to eligible entities if "the Secretary determines that termination of assistance in a particular instance is in the best interests of the program."

Currently, there is scant evidence of any regulatory guidance as to when terminating assistance to a particular recipient of MAP funds is in the best interests of the program.

Unlawful conduct, for example, would be inconsistent with the principles of good corporate citizenship; principles which are clearly enshrined in the MAP regulations. However, without additional clarification through rulemaking that such conduct is not in the best interests of the program, public funding may continue to be distributed to entities despite their unlawful conduct.

Consider the case of one MAP participant, which, in March 2006, an administrative law judge for the National Labor Relations Board (NLRB) found guilty of twenty violations of the National Labor Relations Act. Included in these violations were the illegal firings of employees that were attempting to organize their co-workers into a union, as well as threats of firings and plant closures for any employee that joined the organizing campaign.

Current MAP regulations indicate that it is the position of USDA that businesses are expected to be good corporate citizens and abide by the laws of the countries in which they operate. 7 CFR 1485.19 and 7 CFR 1485.23(b). 7 CFR 1485.19 requires MAP participants to enter into written contracts with employees overseas, and further requires that those contracts conform with local law. Participants are also required to conform office hours, workweeks, and holidays to local law and to the custom observed by U.S. commercial entities in the local business community.

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Additionally, 7 CFR 1485.23(b) addresses the ethical conduct responsibilities of MAP participants in the country in which that participant is carrying out promotion activities. Specifically, a participant is expected to "conduct its business in accordance with the laws and regulations of the country in which an activity is carried out." This section also sets out requirements for intra-industry ethical conduct; prohibition against deceptive or misleading promotions which could subject the participant to cancellation or termination of an agreement; and reporting requirements with respect to actions or circumstances that have a bearing on the propriety of the program.

While these sections of the MAP regulations do not address employment practices of MAP participants specifically, they do establish an affirmative obligation on the part of MAP participants to be good corporate citizens and abide by the laws and even customs of the countries in which they operate. It would seem particularly odd then, if the inverse were not also true – that eligible entities, based in the United States, which receive funding through MAP are not also expected to abide by the laws of the United States.

By spelling out more clearly within the regulations that the Secretary would consider violations of federal law to be a factor in determining whether to terminate assistance to a participant, USDA would help provide needed clarity to the MAP rules. It would also help reinforce the existing requirements of MAP that program participants use responsible business practices, be good corporate citizens, and abide by the laws of the countries in which they operate.

In addition to clarifying the criteria for termination, there is also the issue of what type of action by USDA a participant should be subject to. On this issue as well there is no guidance within the regulations. USDA ought to have the flexibility to respond differently to different types of circumstances. In some cases, permanently or at least indefinitely terminating assistance for serious offenses would certainly be warranted. For less severe infractions, some action short of permanent disqualification from MAP would be more appropriate. Specifying a certain minimum or maximum period of exclusion would bring needed clarity to this current deficiency in the rules of the program.

Accordingly, we request that USDA engage in a formal rulemaking process to specify the meaning of section (f)(2)(D) of the MAP statute. If USDA does not believe that it has the authority to do so, or that such clarification is not necessary, we would also request a formal, written explanation for why this is the case.

Sincerely,



Tom Harkin
United States Senator



Barbara Boxer
United States Senator

Cc: Mark Slupek, Foreign Agricultural Service