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From: svcsmartnfi
Sent: 5/27/2009 5:03:28 PM
To: SMART Core
Subject: TOBACCO: GUIDANCE FOR U.S. DIPLOMATIC AND CONSULAR POSTS ON TRADE AND COMMERCIAL ISSUES

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MRN: 09 STATE 54356
Date/DTG: May 27, 2009 / 272038Z MAY 09
From: SECSTATE WASHDC
Action: TRIPOLI, AMEMBASSY, *ROUTINE*; CAPE TOWN, AMCONSUL, *ROUTINE*; ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE, *ROUTINE*
TAGS: EAGR, BEXP, ETRD, AMGT
Captions: FODAG, NESCO, ICAO
Pass Line: INFORM CONSULS; FOR SREP, , , , UNEP
Subject: TOBACCO: GUIDANCE FOR U.S. DIPLOMATIC AND CONSULAR POSTS ON TRADE AND COMMERCIAL ISSUES

DE RUEHC #4356 1472051
ZNR UUUUU ZZH
R 272038Z MAY 09
FM SECSTATE WASHDC
TO ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE
RUEHTRO/AMEMBASSY TRIPOLI 0000
RUEHTN/AMCONSUL CAPE TOWN 0000

UNCLAS STATE 054356

INFORM CONSULS; FOR SREP, ICAO, NESCO, FODAG, UNEP

E.O. 12958: N/A
TAGS: EAGR, BEXP, ETRD, AMGT
SUBJECT: TOBACCO: GUIDANCE FOR U.S. DIPLOMATIC AND CONSULAR POSTS ON TRADE AND COMMERCIAL ISSUES

FOR ALL DCMS AND MANAGEMENT OFFICERS

1. This cable repeats guidance for State, Commerce, Justice and Agriculture Department employees at overseas posts regarding trade and commercial issues related to tobacco. Please ensure that all appropriate Embassy sections see this guidance. This guidance conforms to requirements in the Department of State, Foreign Operations and Related Programs Appropriations Act, 2009 (Division H of Public Law 111-8; 123 Stat. 914) ("State Appropriations Act"), the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2009 (Division B of Public Law 111-8; 123 Stat. 596) ("CJS

REVIEW AUTHORITY: Steve Blodgett, Senior Reviewer

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Appropriations Act"), and section 770 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2004 (Division A of Public Law 108-199; 118 Stat. 40) ("Agriculture Appropriations Act"). These requirements have been carried in various relevant annual appropriations acts for a number of years.

General Policy

2. The United States respects the right of foreign governments to establish and maintain sound public health practices, encourages them to do so, and, where appropriate, may support such efforts with multilateral and bilateral assistance. At the same time, the opening of international markets to U.S. products, non-discriminatory treatment for U.S. exporters, and removal of barriers to international trade are high priorities of the U.S. government and the Obama Administration. According to the World Health Organization, tobacco use accounts for one in ten deaths worldwide and is responsible for approximately 5.4 million deaths a year, a figure that if left unchecked, will increase to more than 8 million by 2030. Thus, there is a need to distinguish between unjustified, trade-restrictive measures and legitimate health-based actions, so as not to undermine other countries' efforts to reduce the consumption of tobacco and tobacco products and improve the health of their citizens. In accordance with section 7084 of the State Appropriations Act, section 510 of the CJS Appropriations Act, and section 770 of the Agriculture Appropriations Act, funding made available under the Acts may not be used to promote the sale or export of tobacco or tobacco products or to seek the reduction or removal by any foreign country of non-discriminatory restrictions on the marketing of tobacco or tobacco products. At the same time, the U.S. government will continue to seek elimination of discriminatory trade practices and will strive to ensure that all U.S. firms are accorded the same treatment in a foreign country as that country's own firms and firms from other countries. The overall objective of this policy is to ensure U.S. companies have equal access to what we hope will be a shrinking global market for tobacco.

Guidelines

3. The following guidelines are consistent with the Administration's overall approach to reducing the negative health impact of tobacco while protecting the rights of Americans overseas:

(A) Posts are encouraged to actively assist and promote tobacco-control efforts in host countries.

(B) Posts should not challenge host country laws and regulations that are based on sound public health principles, and applied in a nondiscriminatory manner to both imported and domestic tobacco and tobacco products, and for which sufficient notice has been given. If a post

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has reason to believe that such laws or regulations may, in fact, discriminate against U.S. tobacco or tobacco products, or may not be based on sound public health principles, the issue should be referred to Washington for consideration by the appropriate headquarters agency.

(C) Posts should not promote the sale or export of tobacco or tobacco products, and should not assist the efforts of U.S. firms or individuals to do so. Ambassadors or embassy staff should not attend or otherwise support receptions, trade promotions, or any events sponsored by individuals or entities involved in the export, manufacture, promotion, distribution or sale of tobacco or tobacco products where their attendance could be construed as United States government support for the sale or export of tobacco or tobacco products. In accordance with U.S. tobacco policy and the annual cable regarding the solicitation of gifts, posts should refrain from soliciting U.S. tobacco companies, to avoid the appearance of endorsement.

(D) Posts should continue to provide all U.S. citizens or firms with routine business facilitation services such as the provision of publicly available information on foreign country conditions and policies, information or assistance that may help U.S. firms or individuals comply with foreign government laws or regulations, and assistance in resolving business problems — such as customs or port clearance, trademark violations, or sanitary or phytosanitary restrictions that are potentially discriminatory. End Guidance.

Text of Section 7084 of the State Appropriations Act:

SEC. 7084. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

Text of Section 510 of the CJS Appropriations Act:

SEC. 510. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

Text of Section 770 of the Agriculture Appropriations

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Act:

SEC. 770. Hereafter, no funds provided in this or any other Act shall be available to the Secretary of Agriculture through the Foreign Agricultural Service to promote the sale or export of tobacco or tobacco products.

FAS personnel should also review FAS 061402 "Tobacco Guidance for FAS Posts on Promoting the Sale and Export of Leaf Tobacco and Tobacco Products", which continues to be relevant.

Handling Contacts

4. Posts are encouraged to send front-channel queries to Washington for guidance on any tobacco-related issues that arise that are not covered in the current guidance or that require further elaboration. Those cables should be slugged for EEB/TPP/MTAA/ABT, L/EB, OES/IHB, USTR, Department of Commerce, USDA, and Department of the Treasury. As would be the case with any exported U.S. product, posts should also report on any potentially discriminatory actions taken by host country authorities against U.S. tobacco or tobacco products.

5. For issues related to the World Health Organization's Framework Convention on Tobacco Control (FCTC), cables should be slugged for IO/T and L/UNA.

6. In recent years, State has on occasion been asked to report to Congress on actions taken by posts to comply with these guidelines. In that light, posts may find it helpful to collect that information in a useful format for possible future reference.

7. Posts are also encouraged to report back to Washington concerning any actions they have taken to support host-country tobacco control efforts in line with the first guidance point.

8. Minimize Considered
CLINTON

Signature:

Drafted By:

- 5/27/2009

Cleared By:

Approved By:

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