

July 8, 2004

The Honorable Secretary Donald L. Evans
Department of Commerce
1401 Constitution Ave, NW Rm. 5854
Washington, D.C. 20230

Dear Secretary Evans:

As you are aware, small and minority business is a tremendous engine of the U.S. economy. As producers, suppliers, transporters, employers, exporters, and entrepreneurs smooth and transparent access to international markets is paramount to the welfare and growth of the SME sector.

Thus, pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of ITAC-11 for Trade Policy Matters by the Small and Minority Business Committee on the **U.S. - Bahrain Free Trade Agreement**, reflecting a general consensus with comments by the advisory committee on the proposed Agreement.

Sincerely,

John A. Adams, Jr.,
Chairman, ITAC-11

July 8, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Zoellick:

As you are aware, small and minority business is a tremendous engine of the U.S. economy. As producers, suppliers, transporters, employers, exporters, and entrepreneurs smooth and transparent access to international markets is paramount to the welfare and growth of the SME sector.

Thus, pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of ITAC-11 for Trade Policy Matters by the Small and Minority Business Committee on the **U.S. - Bahrain Free Trade Agreement**, reflecting a general consensus with comments by the advisory committee on the proposed Agreement.

Sincerely,

John A. Adams, Jr.,
Chairman, ITAC-11

The U.S. - Bahrain Free Trade Agreement (BFTA)

Report of Industry Trade Advisory Committee
On Small and Minority Business
ITAC-11
July 8, 2004

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ITAC-11: Small and Minority Business Committee

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the **U.S. - Bahrain Free Trade Agreement**, hereafter cited as BFTA.

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, ITAC-11 (formerly known as ISAC-14) on Small and Minority Business hereby submits the following report.

II. Executive Summary of Committee Report

Enclosed is a review of the key items of concern of the committee, submitted for your review, both in terms of the final document as well as the procedures for implementations and resolution of any disputes. The committee, except as noted in the summary and in comments in section V below, applauds the efforts of USTR and Commerce to open freer trade with Bahrain. ITAC-11 supports the basis and overall concept of the Bahrain Free Trade Agreement (BFTA). However, the agreement, in general, should provide expanded opportunities for small and minority business throughout the free trade area.

ITAC-11 supports the expansion of free trade throughout the area. The BFTA agreement, as proposed, however, presents certain inconsistencies with concept of expanding international trade opportunities for the Parties. ITAC-11 members have provided specific comments below on the following topics: U.S. Customs Authority responsibilities, product content origins, customs and third-party verifications, transparency of customs information, dispute settlement,

transparency for regulations and conformity assessment, publication of procurement information, patents, data protection and e-commerce.

III. Brief Description of the Mandate of ITAC-11

The objective of the committee is to provide timely policy and technical advice, information, and recommendations to the Secretary and USTR regarding trade barriers, implementation, and overall concern as it pertains to the operations and international competitiveness of small and minority business.

IV. Negotiating Objectives and Priorities of ITAC-11

The priorities of the committee are to represent the views of small business with the objective to enhance job growth and exports of goods and services by this business sector of the U.S. economy. As a further objective, the committee expresses an ongoing concern that cross-border trade be as fair as possible, transparent, and open to small business.

V. Advisory Committee Opinion on Agreement

The following comments are both general as well as specific, and when possible the applicable section of the agreement has been noted. The following is listed in no particular order.

A. Chapter 3

Article 3.4.3

This article puts U.S. Customs authorities in a position where they will carry out investigations on behalf of Bahraini customs officials. While the U.S. has reciprocal rights, this provision raises sovereignty issues that could have been avoided if the agreement was structured similar to NAFTA. Instead of requiring U.S. authorities to perform enforcement duties on behalf of foreign authorities, NAFTA grants reciprocal access for customs officials, which keeps U.S. Customs from having to work on behalf of foreign governments.

B. Chapter 4

Article 4.1

The proposed thresholds are too low to encourage economic activity in nations that are party to the agreement and they do too much to encourage outsourcing of materials from third party countries.

Article 4.4- Accumulation

The committee would like a clarification on whether or not materials produced in one or both of the Parties and incorporated into a good manufactured in the other Party means that the resulting good will be eligible for the agreement's tariff reductions thanks to its consideration as an originating good.

Article 4.11.2

This article allows for verifications in accordance with each country's own customs law. An agreement that established a uniform list of procedures would do much more to ensure transparency and a level playing field.

C. Chapter 5

Article 5.1.1

This article requires the publication of customs information on the Internet. Going a step further and requiring no-cost access to this information would ensure that the SME community can establish a track record of compliance with the agreement.

On a general note, unfortunately, in this agreement provisions are missing that prohibit third party customs verifications. As the agreement is written, nothing is in place to prevent customs authorities from outsourcing their work to organizations that may not be as sensitive to client confidentiality.

D. Chapter 6

Why is there no recourse to sanitary and phytosanitary dispute settlement under Article 6.1.4? This provision also appears in other new FTAs. This committee would appreciate a clarification as to the significance of the text.

This chapter is lacking in substance and should more specifically address how these measures are to be handled and specific steps to be taken toward harmonization of the regulatory environments of the Parties and Mutual Recognition among regulatory authorities.

E. Chapter 7

Article 7.6 –Transparency

The response period for persons and the other Party to make comments in writing on the proposal should be greater than 60 days as often-times a response will require a scientific review of the information supporting the proposal, or formation of an industry joint-

venture to respond, or engaging the services of a recognized authority to prepare "an expert opinion" in response to the proposal, all of which take time.

Publication of the Party's responses to significant comments should be made well in advance of the publication of the final technical regulation or conformity assessment procedure, so as to allow for a dialogue and full and open consideration of the comments by peers of persons submitting significant comments and not just the government authority issuing the regulation or procedure.

Implementation of Article 7.6 should be immediate or not later than one year from date of entry into force of the Agreement.

Article 7.7

This provision provides a good vehicle for advancing cooperation on TBT issues.

F. Chapter 9

Article 9.3- General Principles

In order to effectively monitor the achievements of this section, the following text should be considered and added:

"The parties to this FTA will undertake a "best efforts" initiative to identify and report, in a timely manner, the number and dollar value of procurement awards made to the other party's businesses, with particular attention being given to identifying the participation of small firms."

Article 9.4- Publication of Procurement Information

In view of the ease and broad use of the Internet to publicize key information of interest to international business, it is only fitting that this section establish a priority that requires use of the Internet for procurement publication, unless a compelling justification can be made for its delayed use. Accordingly, the following text should be considered and incorporated into this FTA text under this section:

"The parties to this FTA will give priority attention to publishing procurement information by electronic means on the Internet and will only defer to the print media when compelling justification can be made for delaying the electronic distribution of this vital information."

G. Chapter 14

Article 14.8- Patents

This violates the concept of confidentiality and the underlying rights of the patent owner and does not address the issue of compensability. This is particularly important to a small company whose real value may lie in its intangible assets (i.e. its intellectual property).

Article 14.9- Measures Related to Certain Regulated Products

The period of data protection offered of 5 years for pharmaceutical product and 10 years for agricultural chemical products is completely inadequate for the small business owner of the data to recoup the investment required to generate the data and it should be increased to 10 years for pharmaceutical products and a minimum of 12 years for agricultural chemical products.

Again, the period of data protection offered of 3 years for pharmaceutical products is inadequate and should be doubled to 6 years minimum. The committee would like a clarification as to why there is such a discrepancy between the treatments afforded a pharmaceutical product (3 years protection) and an agricultural chemical product (10 years protection).

H. Electronic Commerce

E-commerce is critical to small and minority business expansion in international trade. However, the limited focus of this FTA section on only the electronic transfer of digital data does not fulfill the small and minority business need for a comprehensive electronic commerce section to this FTA.

Accordingly, we urge the Parties to establish an E-commerce working group, under the administration of agreement provision, to facilitate this evolution of a comprehensive E-commerce operation between the Parties.

VI. Membership of Committee

Chairman

Mr. John Adams

Executive Director
Laredo Development Foundation
Laredo, TX

Vice-Chairman

Mr. John Allen

Chairman and CEO
Allen and Associates International, Ltd.
Greensboro, NC

Vice-Chairman

Mr. Roger Dickey

President
Kensington International, Inc.
Charlotte, NC

Vice-Chairman

Mr. Donald Williams

President and CEO
Princeton Healthcare, Inc.
Marietta, GA

Mr. Kent Bank

President
Minneapolis Washer and Stamping
Company, Inc.
Minneapolis, MN

Ms. Sarian Bouma

President and CEO
Capitol Hill Building and Maintenance, Inc.
Landover, MD

Mr. Bernard Brill

Executive Vice President
Secondary Materials and Recycled Textiles
Association
Bethesda, MD

Ms. Candace Chen

President
Power Clean 2000, Inc.
Los Angeles, CA

Mr. Wesley Davis

President and CEO
Proxtronics, Inc.
Springfield, VA

Ms. Karen El-Chaar

Corporate Secretary/Treasurer
Hamilton Services Group, Inc.
Allentown, PA

Dr. Sharon Freeman

President
Lark-Horton Global Consulting, Ltd.
Washington, DC

Ms. Sherrie Gilchrist

President and CEO
Chattanooga African-American Chamber
of Commerce
Chattanooga, TN

Ms. Carolyn Keats

Director, International Sales
Tender Corporation
Littleton, NH 03561

Mr. George Keller

President
Customs Advisory Services, Inc.
Atlanta, GA

Mr. John Kolmer

NAFTA Trade Specialist
Turner Center for Entrepreneurship
Peoria, IL

Mr. Lewis Kranick

Consultant
Representing Krandex Corporation
Elkhart, WI

Ms. Catherine Lee

Managing Director
Lee International Business Development LLC
Westbrook, ME

Mr. Peter Lehman
Director, Planning and Development
South Carolina State Port Authority
Charleston, SC

Mr. James Meenan
Consultant
Global Business Access, Ltd.
Fairfax, VA

Dr. Brenda Mitchell
Chief Executive Officer
Management and Environmental
Technologies, Inc.
Philadelphia, PA

Mr. David Padilla
Vice-President
Manuel Lujan Insurance Agency
Sante Fe, NM

Mr. Jeffrey Ruffner
Vice-President and General Manager
MSE Technology Applications, Inc.
Butte, MT

Mr. Esteban Taracido
President
Tele-Signal Corporation
New Rochelle, NY

Mr. Jose Travez
Vice-President
Prototype Productions, Inc.
Ashburn, VA

Mr. Craig Trumbull
Chief Financial Officer
RC Publications
Rockville, MD

Mr. William Weiller
Chairman of the Board and CEO
Purafil, Inc.
Doraville, GA

Mr. Jon Weinstein
President and CEO
Apex Plastic Industries, Inc.
Hauppauge, NY