

March 9, 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 the Industry Sector Advisory Committee on Small and Minority Business (ISAC-14) on the **U.S. – Central American Free Trade Agreement**, reflecting a general consensus with comments by the advisory committee on the proposed Agreement.

Sincerely,

John A. Adams, Jr.,
Chairman, ISAC-14

March 9, 2004

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

Dear Ambassador Zoellick:

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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 the Industry Sector Advisory Committee on Small and Minority Business (ISAC-14) on the **U.S. – Central American Free Trade Agreement**, reflecting a general consensus with comments by the advisory committee on the proposed Agreement.

Sincerely,

John A. Adams, Jr.,
Chairman, ISAC-14

The U.S. - Central America Free Trade Agreement (CAFTA)

Report of the Industry Sector Advisory Committee on
Small and Minority Business
(ISAC-14)

March 9, 2004

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ISAC-14: Small and Minority Business Committee

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

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, 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 this summary and in the comments in section V below, applaud the efforts of USTR and Commerce to open freer trade with Central America.

ISAC 14 supports the basis and overall concept of the Central American Free Trade Agreement (CAFTA). The agreement, in general, should provide expanded opportunities for small and minority business throughout the free trade area.

ISAC 14 supports the expansion of free trade throughout the area. The CAFTA agreement, as proposed, however, presents certain inconsistencies with concept of expanding international trade opportunities for the Parties. The agreement, as proposed, fails to adequately address issues affecting small and minority business within the territory.

ISAC 14 recommends that the USTR ensure that all trade commodities and sectors are given trade liberalization benefits under the agreement. The proposed exclusion of sugar from trade liberalization establishes a dangerous precedent to this and future fair trade agreements. The exclusion of certain commodities from tariff reduction invites our trade partners to also exclude certain trade sensitive areas in their countries from trade liberalization.

ISAC 14 recommends that the CAFTA content requirements provided for in the rules of origin be raised to percentages consistent with the NAFTA agreement. The content percentages under the rules of origin should be raised to a minimum of 50% for the build-up method and 60% for the build down method as described in the rules of origin for all products requiring content calculation. The higher content percentages will encourage expansion of manufacturing and production capacity within the territory. The higher content percentages will also ensure that parties located within the territory will receive the majority of benefits as provided for in the agreement. NAFTA's 50%/60% numbers are calculated in a different manner than the build-down or build-up methods. NAFTA's Net Cost (50% - NC) approach is similar to the build-up method, while NAFTA's notion of Transaction Value (60% - TV) is similar to build-down. If the percentages are changed to be similar to NAFTA, the calculation method should be adjusted as well.

ISAC 14 recommends that each Party establish an executive department level contact from which interested private parties may seek advice and direction as to which department or agency could most likely answer questions or provide guidance about government process, procedures and regulations. The ability of small and minority businesses to benefit under the agreement will be directly related to their ability to contact the proper officials or departments within the governments of the respective parties. There is concern that given the staged sign-on of the five Central American countries, there will be five different sets of rules. Thus, regulatory information from partner country websites will undoubtedly be very important to American SME. Having a single point of contact, with associated websites in English in each nation will be of great aid to the SMEs in getting the information they need.

ISAC 14 recommends that the threshold for U.S. government procurement be set at the same financial thresholds as those of other governments. The difference between contract levels, and associated phase-in for other Party members, provides unequal opportunities for U.S. small and minority business as opposed to those private concerns from other Party members. Equal access to government procurement activities should be consistent for all levels of procurement between the Parties in order to provide equal opportunity to all potential vendors.

The specific comments of ISAC 14 are shown by chapter and article and are reviewed below.

III. Brief Description of the Mandate of ISAC-14 Committee

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 ISAC-14

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. Rule of Origin: Chapter Four

General: In order to encourage use of originating materials all items requiring content percentages should be revised as follows:

Build-Up Method:	Proposed: 35%
	Recommend: 50%
Build-Down Method:	Proposed: 45%
	Recommend: 60%

The revision in the percentages is recommended to provide consistent treatment between qualifying and non-qualifying goods under NAFTA. Furthermore, use of content percentages consistent with NAFTA will assist companies in minimization of implementation and cost analysis for origin calculation considerations. See the above comments on RVC calculations.

Article 4.1

Add an article (d) that requires all procedures for originating goods must be individuals or entities with physical location being solely within the territory of one or more of the Parties. Individuals or entities not located with the territory of one or more of the Parties cannot be a producer.

Section A

Article 4.2

For items requiring an RVC %:

- 1.a. Increase the RVC % for Build-Down method to 60%
- 1.b. Increase the RVC % for Build-Up method to 50%
2. Add a requirement to this section that whatever method is used for an RVC calculation this method must be consistently used for a period of not less than twelve months from the date of selection of the method.

Article 4.3

(b) Values for goods produced in the territory should **solely** (emphasis added) be determined in accordance with the valuation rules of the WTO agreement on Valuation. The phrase regarding “reasonable modifications as may be required due to the absence of an importation” should be deleted. In the absence of its deletion specific definition of “reasonable modification” should be provided and examples of the reasonable modification provided as well.

Article 4.4

(1) The incremental costs as identified in (a) and (b) of this item as presented are consistent with calculation of origin as defined. If the rules of origin are changed or modified to other percentages as identified in our comments then changes to this section must occur accordingly. The list of inclusions and exclusions is solid and should remain independent of the numeric RVC values.

Article 4.6

The de minimis percentage for non-originating material should not exceed 5%. The 10% threshold is too high as proposed. This factor discourages use of originating material. *Note:* Unfortunately, the Chile FTA 10% requirement has already deviated from NAFTA’s 7% rule. Having a 5% threshold would only further muddy the water, thus a 7% number would facilitate downstream harmonization of different FTAs.

Article 4.7

1. A requirement should be added that the inventory method selected must be used consistently for a period of at least twelve months from the date of selection of an inventory method. The proposed 12-month period may or may not coincide with a calendar or fiscal year. Perhaps some additional wording similar to that which appears in Article 4.2 will further clarify the matter.

Article 4.13

2. The non-originating good percent in sets is too high. The maximum percentage allowed for non-originating goods in a set should not exceed 5% of the adjusted value. This lower percentage will encourage a greater use of originating goods within the set.

Article 4.15

4(c). A written or electronic certification claiming preferential treatment within the territory must be accompanied by a Certificate of Origin submitted at the time the entry is filed.

5. A claim for preferential treatment should be allowed up to one year after the “date of entry” rather than “date of importation” as currently proposed. The language as written fails to consider use of bonded warehouses and free trade zones where goods may be stored pending entry of goods for consumption into the territory of a Party.

5(b). A post importation claim for preferential tariff treatment must be submitted with a properly executed Certificate of Origin.

Article 4.16

1. Add an item (c) requiring that all entities providing a certificate of origin be parties with physical location and presence be located within the territory of one or more of the Parties. Requiring importers, procedures and exporters to be located within the territory of one or more of the parties will encourage employment within the regional.

5. Change item 5 to require a certificate of origin shall be valid for a period not exceeding twelve (12) months from the date of issuance. Allowing a certificate of origin to be valid for more than a 12 months period will result in numerous violations of law because business situations routinely change and associated records and paperwork are forgotten unless a mandatory change is required on a regular basis.

Article 4.17

(a) A certificate of origin is required for all shipments exceeding \$1500. The option in this section of letting an importer judgmentally determine when a certificate is required will lead to judgmental determination that can be challenged by Customs authorities. A transparent certificate of origin requirement is required in order to ensure compliance under the agreement.

Article 4.18

General

Producers, Exporters and Importers must be individuals or entities with physical presence located within the territories of one or more of the Parties.

Article 4.20

General

Add an item that states that verification of origin may only be conducted by the appropriate Customs authority of the party. No third party may be contracted to perform verifications on behalf of the legally authorized Customs organization of each Party. Doing so will help avoid the entry of SGS into the verification procedures.

Also, no provision is noted for observers as a part of the verification audit process. NAFTA allows for two, CAFTA should do the same.

Article 4.22

General

Add a definition that the exporter, producer and importer be a person or entity with a physical presence within one or more territories of the Parties.

Producer: modify definition to be “person or entity located with physical presence within the territory of one or more of the Parties”

B. **Electronic Commerce**

E-commerce is critical to small and minority business in terms of access to customers and bidding opportunities. How e-commerce unfolds will be of great concern to ISAC-14, thus we urge that the parties establish an e-commerce working group, under the administration of agreement provision, to allow full and timely comments from the SME sector.

We do take note that the provisions, under the heading Electronic Commerce, contained in the CAFTA text only directly address the Customs Duty needs of the limited industry dealing with the importation or exportation of digital products by electronic transmission. The required provisions for creating the framework for a real Comprehensive Electronic Commerce System are missing.

- C. **Trade Dispute Settlement** - Dispute settlement and transparent treatment are critical to small business. Thus, while the agreement deals with the subject of Dispute Settlement between the public parties, we find that small business, in particular, require means to settle Private Trade Disputes in a timely and low cost fashion. Accordingly, we recommend that the work on this topic started under a NAFTA Working Group be expanded in this agreement by appointing a Private Trade Dispute Settlement Working Group under the Administration of Agreement provisions.

D. **Chapter Five:**

Article 5.1

Add item 4. Each Party shall publish the name, address and phone number of the organization where Customs rulings may be obtained.

Article 5.11

Add a section that requires that implementation of this section will only be conducted by the legally authorized governmental Customs authority of each Party. No Party may contract out Customs authorization, verification, inspection or enforcement activities to third parties. Hopefully this will keep SGS out of the business.

E. **Government Procurement: Chapter Nine**

Article 9.2

ISAC 14 supports the principle of equal treatment for all suppliers both within and outside the territory of each Party.

Annex 9.1

Thresholds:

The proposed thresholds identified in this annex do not support principles identified in Article 9.2 of this chapter. ISAC 14 recommends that thresholds for goods and services and construction services be established at the same level for all countries. The thresholds as proposed discriminate against small and minority businesses in the U.S. by allowing firms outside the U.S. to compete on contracts at a lower level than U.S. may compete on contracts in other territories of the Parties. Equal treatment of all entities by the Parties can only be established if financial opportunities are applied consistently by the Parties.

F. Transparency: Chapter Eighteen

Article 18.1

Add Item 3. Each party shall establish a primary contact point for individuals and entities located within the territories of the Party that can provide guidance, assistance and information about government services within the Party.

VI. Membership of Committee

Chairman

Mr. John Adams
Executive Director
Laredo Development Foundation
Laredo, TX

Principal Vice-Chairman

Mr. Roger Dickey
President
Kensington International, Inc.
Charlotte, NC

Alternate Vice-Chairman

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

Alternate Vice-Chairman

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

Mr. John Allen
Chairman and CEO
Allen and Associates International, Ltd.
Arlington, VA

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
Proxtronic, 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. Margaret Gatti
Attorney
Gatti and Associates
Haddonfield, NJ

Ms. Sherrie Gilchrist
President and CEO
Chattanooga African-American Chamber
Chattanooga, TN

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

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. 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

Mr. Donald Williams
President and CEO
Princeton Healthcare, Inc.
Marietta, GA