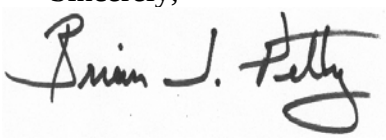
25 April 2007

The Honorable Susan C. Schwab
United States Trade Representative
Executive Office of the President
Washington, DC 20508

Dear Ambassador Schwab:

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 Trade Advisory Committee on Automotive Equipment and Capital Goods (ITAC 2) on the US-Panama TPA, reflecting consensus on the proposed Agreement.

Sincerely,



Brian T. Petty
Chair, ITAC 2

cc: Trade Advisory Center
Richard Reise

The U.S.-Panama Trade Promotion Agreement

Report of the
Industry Trade Advisory Committee on Automotive Equipment
and Capital Goods (ITAC 2)
April 25, 2007

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ITAC 2 Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the US-Panama Trade Promotion Agreement

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the US Trade Representative, and Congress with reports required under Section 135 (e) 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 negotiation objectives set forth in the Trade Act of 2002.

Pursuant to these requirements, ITAC 2 hereby submits the following report.

II. Brief Description of the Mandate of ITAC 2

The Industry Trade Advisory Committee on Automotive Equipment and Capital Goods (the Committee) is established by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) pursuant to the authority of section 135 (c)(2) of the 1974 Trade Act (Public Law 93-618), as delegated by Executive Order 11846 of March 27, 1975. In establishing the Committee, the Secretary and the USTR consulted with interested private organizations and took into account the factors set forth in section 135 (c)(2)(B) of the Act.

III. Executive Summary of Committee Report

ITAC 2 supports the Agreement. It provides important safeguards for investment, and also significant new market access opportunities for US manufacturers and automotive equipment.

IV. Advisory Committee Opinion on Agreement

Investment

With respect to the protection of US investment, the investment chapter of the Agreement generally contains the primary protections sought by the Committee and included in the Trade Promotion Authority legislation, enacted as part of the Trade Act of 2002. These include a broad definition of "investment;" guarantees of prompt, adequate and effective compensation for expropriation; a ban on performance requirements; and commitments to provide national treatment, most-favored nation treatment, fair and equitable treatment and full protection and security.

Very importantly, the Agreement includes the investor-state dispute settlement mechanism that is vital to afford US investors the opportunity to ensure that their investments are protected against arbitrary, discriminatory and unfair government actions.

In addition, the Agreement provides for investor-state dispute settlement with respect to the breach of investment agreements that a US investor has entered into with the Government of Panama. As provided in the Initial Provisions of the Agreement, for investment agreements that have been entered into prior to the entry-into-force of the Panama Agreement, investors would continue to have the same rights they currently have under the existing US-Panama Bilateral Investment Treaty. For investment agreements entered into after the date of entry-into-force of the Panama Agreement, investors would have rights to investor-state dispute settlement for the breach of such an agreement under the US-Panama TPA.

For non-investment agreement claims under the existing US-Panama Bilateral Investment Treaty, investors have ten years to submit such claims, after which all such claims would need to be brought through the US-Panama TPA, as the Bilateral Investment Treaty is suspended.

The TPA also protects the legitimate exercise of each government's regulatory authority to protect "public welfare objectives, such as public health, safety, and the environment" that do not rise to the level of an expropriation. The TPA also seeks improved transparency in investor-state mechanism as sought by the Trade Act of 2002 and provides for the consideration of a bilateral appellate mechanism after three years.

The Committee notes that unlike several other US trade agreements, the TPA (similar to the Peru and Colombia Trade Promotion Agreements) includes a so-called fork-in-the-road provision with respect to cases involving investment authorization and investment agreements, such that investors are precluded from pursuing investor-state arbitration pursuant to the Agreement's investment chapter if they have first brought an investment agreement or investment authorization claim in a local administrative or court tribunal. The Panama TPA also includes very specific dispute settlement procedures for investment agreement claims involving the Panama Canal Authority. In those cases, investors are required to first seek recourse through the Panama Canal Authority and only after a set period may then pursue investor-state dispute settlement under the Agreement. The Committee is concerned that the differing standards in recent Free Trade Agreements (FTAs) and Bilateral Investment Treaties (BITs) could too easily cause confusion for investors overseas who may inadvertently bring a domestic challenge, only to find that they have unwittingly lost access to the investor-state dispute settlement system. This provision also creates a great deal of complexity to arbitrations given whether the same claim is being brought would be an issue in controversy. The Committee urges that the US Government work to ensure that investors in Panama and in other countries with which the United States has an FTA or a BIT are provided adequate information on this issue in order to avoid an inadvertent loss of investor-state rights.

Automotive Provisions

Panama represents one of the largest motor vehicle markets in the Central America region. In 2005, 41,120 new and used motor vehicles were sold in Panama. About one-half of annual sales are used vehicles. Of the new vehicles sold, the dominant players in the Panamanian auto market are Japanese and Korean auto manufacturers. Japanese based automakers represent eight of out ten new motor vehicle sales in Panama.

Korean automakers represent 10% and European automakers represented 7%. US automakers represented about 2% of those sales.

The US-Panama TPA provides clear benefits and commercial cost competitive advantages to US auto manufacturers and is a marked improvement over the agreement reached with the CAFTA countries. By immediately eliminating tariffs on most passenger cars and trucks likely to be exported from the US, it offers the opportunity to increase US vehicle sales in Panama. These benefits will also accrue, of course, to exports of cars and trucks built in all US auto manufacturing facilities, including Japanese, Korean and European automakers, provided they meet the automotive rule of origin contained in the agreement.

Tariffs

Panama maintains tariffs on motor vehicles that range from 5-20% (HTS 8701-8705). Passenger car tariffs are 10-20% on a sliding scale based on the value of the vehicle (the value between $US 0-$12,000 pays 15%; $US 12,001 –14,500 pays 18%; and the value over $US $14,500 pays 20%). Pickup trucks pay a flat 10% tariff and commercial trucks are assessed a tariff rate of 5-10% based on weight. This value-based tariff structure tends to promote the importation of used vehicles by giving lower-cost used vehicles a lower tariff rate. The value-based structure also opens US motor vehicles to the inherent subjectivity of customs valuation, which can lead to increased customs challenges, administrative burden and delay.

The US auto manufacturing companies represented on ITAC 2 had recommended elimination of Panamanian tariffs on all motor vehicles (HTS 8701-8705). Priority HS categories are 8703 and 8704. Companies believe this would bring significant advantages to US automakers vis a vis their local Japanese and Korean competitors.

Auto and auto parts representatives on ITAC also supported the immediate elimination of tariffs on automotive parts and components.

The treatment of automotive tariffs in the US-Panama TPA is mixed, but structured in such as way as to address many US commercial interests in the motor vehicle segment.

The agreement provides for immediate duty free treatment for the motor vehicle HS categories where nearly all US current and projected exports will be placed: Passenger vehicles over $12,00 in value; and trucks under 5 tons. The one area treated differently that is of potential interest to some US manufacturers concerns the treatment of diesel engine automobiles, for which Panama's tariffs are phased down over a 10- year phase down and diesel-powered light trucks, which are in a 5- year phase-down category.

All US auto tariffs are immediate duty-free.

Rule of Origin (ROO)

ITAC 2 auto manufacturer representatives had supported the use of a streamlined "net cost" automotive ROO methodology as the sole option in determining the origin of automotive products for all the US Free Trade Agreements in the Western Hemisphere. However, for the CAFTA agreement and the US-Dominican Republic FTA, the US government elected to offer importers the option to select from a short menu of ROO methodologies to determine automotive origin – including a streamlined "net cost": method. Since Panama

is not an auto manufacturer /assembly location and all other US FTAs within the Central American subregion already use the ROO "menu" approach, ITAC 2 auto representatives supported using the CAFTA Auto ROO methodology as the model for the US Panama TPA.

With regard to the recommended regional value content (RVC) level for the automotive, ITAC 2 supported the use of the same RVC% level used in the CAFTA and US – Dominican Republic.

Outcome: The US-Panama TPA contains the same menu of methods and percentages as CAFTA:

- 35% Adjusted Value/Build-up
- 50% Adjusted Value/Build-down
- 35% Net Cost

This result is considered acceptable to ITAC 2.

Used Cars

The Agreement contains a side letter relating to treatment of used car sales. In it, the United States agrees it will not initiate dispute settlement procedures under Chapter Twenty of the Agreement with respect to any restrictions that Panama may apply, prior to the date of entry into force of the agreement on the importation of used passenger motor vehicle**s.**

ITAC 2 members support this side letter.

V. Membership of Committee (list of members)

Brian T. Petty	Gary Held	John J. Meakem	Thomas L. Trueblood
Stephen J. Collins	Leslie A. Hennessy	Mustafa Mohatarem	Simonetta Verdi
Durga D. Agrawal	Jon E. Jenson	Carl Occhialini	Franklin J. Vargo
Gary F. Devlin	Lee Kadrich	Robert S. Perkins	L. Ann Wilson
Thomas M. Egan	William C. Lane	John W. Rauber, Jr.	Nick S. Yaksich
William Gager	Stephen Latin-Kasper	Linda M. Spencer	A. Steven Young
David R. Gridley	Patrick W. McGibbon	Jon Taylor	James Zawacki