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April 18, 2007

The Honorable Susan Schwab
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

The Honorable Carlos Gutierrez
Secretary
Department of Commerce
14th and Constitution Avenue
Washington, D.C. 20230

Dear Ambassador Schwab and Secretary Gutierrez:

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 Customs Matters and Trade Facilitation (ITAC 14) on the U.S.- Panama Free Trade Agreement (FTA), reflecting our consensus advisory opinion on the proposed Agreement.

The members of the Committee support implementation of this free trade agreement as another opportunity for U.S. business and industry to grow their world market while providing needed economic benefits to the business and industry of Panama. The provisions of this agreement are fair and reciprocal. The Committee wishes to take this opportunity to thank Dorothy Dwoskin, Matt Rohde, Ann Barnett-Dahl, Jay Eizenstat, Steve Jacobs and the many others in your offices who have made the extra effort to work with our Committee members to keep them advised of developments during these negotiations. It is a pleasure to work with them because the results in the agreement demonstrate that our views and opinions were heard and taken into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "James B. Clawson", is written over a thin red horizontal line.

James B. Clawson
Chair
ITAC I4

Enclosure

The U.S.-Panama Free Trade Agreement (FTA)

**Report of the
Industry Trade Advisory Committee on Customs Matters and
Trade Facilitation (ITAC 14)**

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Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC 14)

ITAC 14 Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. – Panama Free Trade Agreement

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 principal negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate trade 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 14 hereby submits the following report.

II. Executive Summary of Committee Report

The Committee reviewed that part of the agreement that covers customs procedures or is otherwise required to be administered by the customs administrations of the parties. The Committee has not reviewed or commented on the other provisions in the agreement such as investment, procurement, intellectual property or the agriculture and non-agriculture market access provisions. As with previous such agreements, the Committee found this agreement to be fair and balanced. It provides many benefits to U.S. traders and is basically consistent with other similar agreements negotiated over the past few years. As a result of these positive provisions, the Committee believes the agreement does provide equity and reciprocity in the customs functional area.

III. Brief Description of the Mandate of ITAC 14

The Industry Trade Advisory Committee (ITAC) on Customs Matters and Trade Facilitation is concerned with all aspects of the process of importing and exporting goods through customs services, both domestic and foreign, and, with facilitation of the movement of such goods into and out of customs.

Industry representatives serving on the Customs ITAC provide advice on trade policy matters. Recently, members of the Customs ITAC have provided advice on a range of issues that included: Customs provisions in other free trade agreements, WTO Trade Facilitation negotiations, the Agreement on Rules of Origin, as well as provided input to the Harmonized System and Valuation Technical Committees in the World Customs Organization (WCO). The committee also provided advice and recommendations on the operations and implementation of the Customs Valuation Agreement by the WTO Valuation Committee.

Members of the Customs and Trade Facilitation Committee also worked extensively on the WTO trade facilitation efforts and initiatives for the Doha round of trade negotiations leading up to the Hong Kong Ministerial Conference, the July efforts to seek an agreement on negotiating modalities that ended in a pause in the negotiations and now the efforts to restart those talks. Members also provided advice on the effects of implementation of the international trade data systems and the customs import security issues including the development of the Framework for Security and Trade Facilitation in the World Customs Organization.

Industry representatives serving on the Industry Trade Advisory Committee on Customs Matters and Trade Facilitation have a voice in U.S. trade policy formulation through the Industry Consultations Program (ICP), which emerged from the 1974 Trade Act; to ensure that trade negotiators were coordinating with the private sector during trade negotiations. Based on the program's success, the ICP was renewed and expanded by the Trade Agreements Act of 1979 and the Trade and Competitiveness Act of 1988. The Department of Commerce, the Office of the United States Trade Representative (USTR) and other agencies work side-by-side with business leaders who serve as advisors to the U.S. Government. The Department of Commerce and USTR have joint responsibility for operating the Advisory Committees of the ICP.

IV. Negotiating Objectives and Priorities of the Committee

The principal purpose of free trade agreements is to move goods across the parties' borders with as little intrusion on the transaction as possible. Customs agencies are charged with the protection of those borders and the collection of duties, taxes and data. While a number of areas were negotiated as part of the U.S. – Panama Free Trade agreement that could have customs implications, there were several principal objectives of this Committee. The functions of the import process and how it is administered can make the agreement more successful for the benefit of traders or it can maintain non-tariff barriers to that trade. Another objective was to ensure that the rules and regulations are transparent and understandable to all traders including small and medium sized enterprises. We also wished to ensure that the agreement included a mechanism to keep those practices for import and export current with global business “accepted best practices.”

To provide advice on these objectives the Committee commented on the following issues:

A. Adherence by Panama to existing customs conventions including:

- Harmonized Commodity Coding System (HS)
- WTO Agreement on Customs Valuation
- ATA Carnet
- Rules of Origin Agreement
- Drawback
- Pre-shipment Inspection Agreement
- Trade Facilitation
- Kyoto Convention Revised

- B. Use of electronic import processing including use of electronic certification of origin.
- C. Advance rulings on compliance with import regulation requirements.
- D. Reducing import clearance times, particularly for express shipments and other time sensitive goods.
- E. Adoption of clear and transparent rules of origin for determining eligibility of products for trade preference programs with an appeal process. The rules of origin should be consistent across the various FTAs with a preference for product specific tariff shift based rules rather than GSP value added type rules.
- F. Mechanisms to keep customs rules updated and current with accepted best practices.

V. Advisory Committee Opinion on Agreement

With their experience from several previous Agreements and the continuing work of the World Customs Organization, the members of the Committee believe that the customs sections of the Panama agreement substantially meet the Committee objectives. The U.S. negotiators met regularly with the Committee and solicited advice. Those negotiators were responsive to the unsolicited advice from the Committee as well. From the results included in the Agreement, it is apparent that the negotiators accepted the Committee's advice and sought to achieve all of the objectives of the Committee. On balance, the agreement provides equity and reciprocity in the customs areas. One of the more important objectives of the Committee was to ensure consistency in the customs chapters with those found in previous agreements. In general these objectives have been met.

The following is a more detailed description of some of the customs provisions that the Committee believes our negotiators were successful in being able to include that reach the objectives of the Committee.

▪ **General Provisions**

The Committee reviewed the customs section of the agreement and is pleased that so many of the current accepted best practices have been included in those provisions. From the 48-hour release of goods standard to the need to make the rules and procedures available to the public, the coverage of agreed to practices implements many international customs guidelines. The recommendation to use risk assessment principles and the requirement to provide a review and appeal process from customs determinations are significant provisions for the benefit of traders. With the need for the exchange of information between parties and the increase in the collection of data from the trade, the provisions on confidentiality become critical. The key for the

members of the Committee is the capacity of both parties to implement those requirements. The provisions in the Agreement to create a Committee to administer the parties' obligations with the specific provision to focus the group's attention of capacity building to implement the customs obligations under Chapter 5 significantly raised the confidence of our members that the objectives will be met.

We are generally pleased with the agreement's provisions, within the Customs chapter, for express shipments. When Article 5.7 of the chapter was agreed to in January 2005, it was the first draft FTA text to include the provision that express shipments should not be limited by a maximum weight or customs value. This is a very important standard for the express industry and it has become part of all the FTAs concluded since January 2005. However, we note with disappointment that, because the Panama FTA's customs provisions were concluded almost two years ago, they do not include what has now become the FTA standard for de minimis shipments. Specifically, the Panama FTA sets a de minimis level of \$100, whereas current FTAs set the level at \$200. Furthermore, the Panama FTA calls for clearance of express shipments within six hours. The express industry would like to see that standard lowered to one hour.

- **Definitions**

The definitions section provides clear and beneficial descriptions for the terms, Temporary Admission; Waste and scrap; Used goods; Recovered goods; and especially Remanufactured products.

- **Rules of Origin**

The Committee reviewed this section for process, not application of the rules. Determination of whether the application of the rules meets the objectives of specific sectors is left to each sector. For process, the origin sections provide for clear rules and the section on Customs Administration provide the ability to request advance rulings on those origin rules, and an avenue for appeal of those rulings. These provide for more efficient administration of the rules.

The Committee also reviewed the specific structure of the rules, which are based both on value content and for specific products, a tariff shift to determine substantial transformation. We did note that wherever there's a buildup choice for RVC methodology, that Net Cost should have been an option offered by the same rule. There are rules for multiple headings where buildup is offered whereas Net Cost is not. Again, the objective of the Committee is ensuring that these various free trade agreements are as consistent and predictable as possible.

- **Certification of Origin**

The negotiators were able to obtain appropriate provisions for the handling of origin certification.

- **Risk Management and Cooperation**

With today's great concerns for national security and the supply chain, the Committee was pleased that risk management processes and the exchange of information to assist in implementing accepted risk management techniques are included as obligations in the Agreement. Legitimate low-risk traders need to be able to avoid the intensive scrutiny by customs authorities necessary to ensure protection from those high-risk transactions.

- **Customs Commodity Classification**

We recommended to the negotiators that parties to the agreement adhere to and use the latest version of the World Customs Organization's (WCO) Harmonized Commodity Coding and Classification System (HS).

- **Valuation**

The Committee also believes that all parties should be obligated to and using the World Trade Organization (WTO) customs valuation system (Agreement on Implementation of Article VII of GATT 1994). That use should be transparent in application, include a binding ruling process. Those requirements were included in the agreement. The Committee calls attention to the importance that Panama applies Article 1 paragraph 2 of the WTO Agreement in an objective and balanced manner. This Article taken together with the Notes to Article 1 prescribe the options for verifying the price between related parties. The Agreement emphasizes that the fact that the buyer and seller are related should not preclude the acceptance of the transaction value.

- **Dispute Resolution**

The Dispute Resolution procedure in the Agreement is well thought out and appears to be workable.

- **Trade Facilitation and Capacity Building**

The Committee is pleased that the agreement includes trade facilitation and capacity building provisions. Trade facilitation is mainly directed to procedures and associated with conformance to standards and information flows that control the international movement of goods and means of payment. With the assistance of improved information technologies, market forces have effected improvements in commercial procedures in recent years. However, obstacles continue to prevent and delay the efficient movement of goods and means of payment across borders, especially in the area of Customs' applications.

The Committee believes that trade facilitation is an absolutely essential ingredient of trade negotiations, and even more so in the light of the recent dramatic downturn in the global economy. Trade facilitation provisions should be focused on the simplification and harmonization of Customs procedures and practices. The process should be transparent and predictable. They should also require Parties to maintain appropriate measures to ensure efficient and fair Customs facilitation of goods that are imported and/or exported by express delivery services suppliers. The agreement's provisions move in that direction.

The Committee also took note of the creation of a Capacity Building Committee that will coordinate the projects and efforts to develop improved processes for Panama. Without that capacity it is doubtful that Panama can fully implement the full intention of the Agreement's provisions.

- **Other Provisions**

Other provisions have met the objectives of the Committee. The Committee was pleased to see the provisions on e-commerce and the treatment of digital goods for customs purposes on carrier

media only and not on the digital content.

VI. Membership of Committee

The Committee is fortunate to have both customs experts and representatives from the industry sector committees. The customs expert members are:

Mr. James B. Clawson
Mr. Donald A. Deline
Mr. John M Kolmer
Mr. Robert J. Leo, Esquire
Ms. Kimberly A. Marsho
Ms. Julia M. McCalmon, Esquire
Mr. John P. McGovern
Mr. Otto Meyers, III, Esquire

Ms. Houda Nounou, Esquire
Ms. Susan M. Presti
Mr. Lauren D. Rachlin, Esquire
Mr. Gilbert Lee Sandler, Esquire
Ms. Evelyn M. Suarez, Esquire
Mr. Max Turnipseed, Esquire
Mr. Charles D. Uthus