

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. - Australia 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 17<sup>th</sup> 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 the Industry Sector Advisory Committee on Small and Minority Business (ISAC-14) on the **U.S. - Australia 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. - Australia Free Trade Agreement (AFTA)

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. - Australia Free Trade Agreement**, hereafter cited as AFTA.

**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 the summary and in comments in section V below, applauds the efforts of USTR and Commerce to open freer trade with Australia.

ISAC 14 supports the expansion of free trade throughout the area. The AFTA agreement, as proposed, however, presents certain inconsistencies within the 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 furthers a dangerous situation to this and future fair trade agreements by placing the special interest of large multi-national corporations above the interest of other international business participants especially those of small and minority

business. 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 supports the proposed tariff phase out periods for products identified in the AFTA. As identified, the phase-out proposed should afford small and minority business in both countries to adjust their business to the opportunities identified in the AFTA.

Specifically, ISAC 14 believes that while free trade is preferential to isolationism and protectionism the AFTA as proposed allows increased use of non-qualified, non-territorial produced raw materials while still allowing the finished good to achieve AFTA preferential duty treatment. Accordingly, ISAC 14 recommends that the AFTA 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. The varying percentages of content identified in the agreement: 35-40% in general, 50% for automotive products, 55% for some footwear etc., will be difficult and expensive for small and minority businesses to effectively implement. ISAC 14 believes the more divergent the RVC approaches the more difficult the AFTA agreement will be for the importing public to understand and achieve the benefits of the agreement. Additionally, government compliance enforcement of the agreement will be more difficult and expensive.

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.

ISAC 14 recommends that the threshold for U.S. government procurement be set at the same financial thresholds as those of other governments. The agreement as proposed appears to do this since the thresholds identified in the agreement appear to be based on foreign currency differences. The specific comments of ISAC 14 are shown by chapter and article in the following comments.

### **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. Textiles and Apparels: Chapter Four**

###### Article 4.1 Definitions:

Add the following definition:

Competent Authorities means the legal authorized Customs organization of each Party. Neither Party shall contract out its operations to private third Party service providers. All verification under the Agreement must be performed by the statutorily authorized, government Customs entity.

###### Annex 4-A

The specific textile rules of origin as presented herein appear reasonable to the members of ISAC 14.

##### **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 Australia text primarily addresses 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, Working Groups established to review and assess of dispute settlements should include “private” sector input. The structure of the panels seems awkward.

**D. Rules of Origin: Chapter Five**

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 the recommended content percentages being consistent with NAFTA, will assist companies in their implementation of cost analysis evaluations because of experience gained with NAFA origin review. Finally, the higher content percentages for a good being produced within the territory will allow companies and individuals located within the territories to achieve maximum AFTA benefits while ensuring that goods and services from outside the territory do not receive the same preferential treatment as those produced within the territory.

Article 5.2

The de minimums percentage for non-originating materials should not exceed 5%. The 10% threshold as proposed is too high. The de minimums percentage as proposed encourages vendors to seek raw materials outside the AFTA territory as opposed to sourcing materials within the territory.

Article 5.12

This section should be amended to state that all claims for preferential treatment under AFTA will be accompanied by a properly executed Certificate of Origin. The parties will develop a form to be used for the agreement. The failure to develop a specific form for use with the AFTA will provide compliance verification problems for both the public and private sectors. Additionally, certification of origin determination will be for a period not to exceed twelve (12) calendar months. All blanket period verification must be revised when circumstances change

from those that were in effect when the Certificate of Origin was proposed.

Article 5.15

Verification of origin can only be performed by the legally authorized government Customs organization of each Party. No outside third Party, or private contractor may be authorized to perform a verification under the agreement.

Article 5.17

The definition of producer needs to be modified to require the producer to be a Party “physically located within the AFTA territory”. To allow producers to be located outside the physical location of the territory allows manipulation of the origin requirements under the agreement. Additionally, a definition for an exporter needs to be added to the agreement in order to ensure that parties receiving preferential benefits under the agreement are physically located within the territories of the parties.

**E. Customs Administration: Chapter Six**

Article 6.2

Add item 3 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 Custom authorization, verification, inspection or enforcement activities to third parties.

Article 6.11

Add a definition that Customs means the legally authorized government entity empowered to enforce customs matters. Customs matters may not be delegated or subcontracted to private third parties for verification, review or data collection under any circumstance.

**F. Government Procurement: Chapter Fifteen**

Article 15.3

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

Annex 1.1

Thresholds: The proposed thresholds identified in the annex principle identified in Article 15.3 of this chapter provided the differences in dollar value are only the result of differences in contract values expressed in local currencies.

## **G. Transparency: Chapter Twenty**

### Article 20.1

Add Item 3. Each Party shall establish a primary contact point for individuals and entities located within the territories of the parties that can provide guidance assistance and information about Customs operations within the territory of each 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  
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. Margaret Gatti**

Attorney  
Gatti and Associates  
Haddonfield, NJ

#### **Ms. Sherrie Gilchrist**

President and CEO  
Chattanooga African-American Chamber of  
Commerce  
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