

April 20, 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 ISAC-14 for Trade Policy Matters by the Small and Minority Business Committee on the **U.S. - Dominican Republic 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

April 20, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
600 17<sup>th</sup> 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 ISAC-14 for Trade Policy Matters by the Small and Minority Business Committee on the **U.S. - Dominican Republic 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. - Dominican Republic Free Trade Agreement (DRFTA)

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

April 20, 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. - Dominican Republic Free Trade Agreement**, hereafter cited as DRFTA.

## **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, applaud the efforts of USTR and Commerce to open freer trade with Dominican Republic.

ISAC-14 supports the basis and overall concept of the Dominican Republic Free Trade Agreement (DRFTA). 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 DRFTA 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 DRFTA content requirements provided for in the rules of origin be raised to percentages consistent with the NAFTA agreement. We believe the Rules of Origin in the DRFTA, if proposed in accordance with those of the CAFTA, should include minimum content percentages under the rules of origin 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.

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 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 in the attached documents under anticipation of a document describing DRFTA requirements being the same as CAFTA.

**NOTE:** ISAC-14 believes release of incomplete documents, partially complete documents and draft documents representing a negotiated FTA places US business and government officers in a position which is inadequate to produce meaningful, constructive advice for USTR and the Congress.

### **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 sectors 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 on Rules of Origin**

General: The following comments are made in anticipation of the DRFTA Rules of Origin following the CAFTA rules of Origin. 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.

#### 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

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

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.

### Article 4.6

The de minimus percentage for non-originating material should not exceed 5%. The 10% threshold is too high as proposed. This factor discourages use of originating material.

#### Article 4.7

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.

#### Article 4.13

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.

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

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 located within the territory of one or more of the parties will encourage employment within the regional.

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.

#### 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. 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.

## **C. Chapter on Government Procurement**

### 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 draft do not support principles identified above. 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.

#### Section J - Transitional Mechanism for Coverage of Construction Services

While it is understood that the Dominican Republic Clearly requires economic assistance, it would appear that the this section leaves substantial room for tightening to make it fair for U.S. Companies. As currently outlined the agreement allows “offset” requirements for foreign participation limits to be reduced over a 15 year period with no guarantee that they will eventually end. For the sake of fairness it would appear that this time frame could be significantly shortened and a definitive end to this practice be put in place.

The thresholds for U.S. government procurement detailed in sections A, B, and C of the Government Procurement Annex should be set at the same financial thresholds as those for the D.R. The difference between thresholds 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.

Section J1 of the Government Procurement Annex is particularly troublesome as its requirement for U.S. firms to create a joint venture with a Dominican firm severely limits the economic benefit to U.S. firms interested in Dominican procurement opportunities.

The Dominican Republic's Explanatory Note To Annexes I and II includes many provisions troubling for small and minority businesses from the United States: Page I-DR-7's requirement for American public accountants, auditors, or bookkeepers, as individuals or enterprises, to practice their profession only in association with a Dominican accountant is an undue and unjustified restraint on the export of services from the United States.

Page I-DR-12 and 13's quotas for Dominican workers in television and radio broadcasting are unjustified, as is the quota for Dominican origin soap operas.

Page I-DR-19's requirement of variety shows offered to audiences in theaters, nightclubs, and other entertainment venues that are performed by foreign artists to include the performance of one Dominican artist for each foreign artist will effectively prohibit the entry of traveling American performing groups. If these American groups are forced to hire 50% Dominican talent to perform, the extreme cost of selecting and training these performers will result in the performances not happening at all and become an undue restraint on service exports from the United States.

The DR Government Procurement provisions poses a great concern for U.S. small business: first by opening its vast public procurement market and loses that business that will be captured by DR firms; second, businesses gain little if anything by having the DR government procurements opened and it will not replace the losses sustained by opening the U.S. market; and third, the Procurement provisions are biased against U.S. small business in that while the U.S. opens its large procurement market with a minimal "Threshold" of Central Level Entities Goods and Services Procurements of only \$58,550, the U.S. small businesses are only provided access to a much smaller market with a "Threshold" of double the U.S. amount of \$117,000 for the first three years. The other "Threshold" amounts are similarly biased against U.S. small business.

#### **D. Article 15:**

Under Article 15.1.4 it is reasonable to expect that ratification or accession to the Trademark Law Treaty (1994) by January 1, 2006 rather than delaying this until January 1, 2008.

The timeline for ratification or accession to the Agreements specified in Article 15.1.6 is not specified.

Under Article 15.1.15 it is not clear that matters of Confidentiality and Compensability will be equitably addressed. A great deal of proprietary (and costly) data is provided to the regulatory authorities at the time of registration of a product such as a pharmaceutical or an insect repellent. This data is owned by the company/companies which generated the data and should not be made available to third parties without the consent of the

owner(s) and without some form of compensation being made when forced release of the data is enacted.

By way of illustration, the most commonly used active ingredient in an insect repellent is diethyl-meta-toluamide (DEET). This is registered with the US EPA and a great deal of pharmacological/toxicological and environmental impact data was required by the EPA before approval was given for its use. It cost millions of dollars to generate this data and so an industry joint venture (The DEET Joint Venture) was formed to fund this undertaking. It is inconceivable that now third parties should be allowed by the local regulatory authorities to reference this data to obtain regulatory approval of the DEET they may produce locally (it is now off-patent) without compensating the owners of the data but this is indeed what the industry has faced in a number of cases.

Under Article 15.9.3 it is possible for either Party to negate the protection afforded by a Patent with only a vague reference to "limited exceptions". It should be more clearly stated what exceptions to the exclusive rights to a patent are deemed legitimate.

Article 15.9.5 is anathema to the pharmaceutical industry as well as to many other industries including the insect repellent industry. Unless Compensability for use of such information or data contained in a previously registered patent is clearly afforded then the concerns of these industries are not addressed.

## **E. Transparency**

### General

The following comments are made in anticipation of the DRFTA. Transparency Rules following the CAFTA transparency rules. 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.

### 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.

## **F. 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.

## **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.  
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**Mr. John Kolmer**

NAFTA Trade Specialist  
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**Mr. Lewis Kranick**

Consultant  
Representing Krandex Corporation  
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**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,  
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**Mr. David Padilla**

Vice-President  
Manuel Lujan Insurance Agency  
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**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