

April 25, 2007

The Honorable Susan Schwab
U.S. Trade Representative
600 17th Street, NW
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 Distribution Services for Trade Policy Matters (ITAC 5) on the U.S.-Panama Trade Promotion Agreement (Panama TPA), reflecting consensus advisory opinions on the proposed Agreement.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Holwill", with a long horizontal stroke extending to the right.

Richard N. Holwill
Chair
ITAC 5

April 25, 2007

Industry Trade Advisory Committee on Distribution Services for Trade Policy Matters (ITAC 5)

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S.-Panama Trade Promotion Agreement

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, the Industry Trade Advisory Committee on Distribution Services for Trade Policy Matters (ITAC 5) submits the following report on the substance of the U.S.-Panama Trade Promotion Agreement (Panama TPA).

IV. Committee Membership

Industry Trade Advisory Committee On
Distribution Services
ITAC 5

Chairman
Mr. Richard N. Holwill
Vice President, Public Policy
Alticor, Inc.

Primary Vice-Chairman
Erik O. Autor, Esq.
Vice President, International Trade Counsel
National Retail Federation

Secondary Vice-Chairman
Mr. Richard L. Crawford
Corporate Vice President, Government Relations
McDonald's Corporation

Mr. Steven Becker
First Vice President, Treasurer
Southern Wine & Spirits of America, Inc.

Ms. Devry S. Boughner
Director, International Business Relations
Cargill, Inc.

Mr. Albert A. Gallegos

Director, International Affairs
National Automobile Dealers Association

Mr. Peter V. Handal
President and Chief Executive Officer
Dale Carnegie and Associates

Mr. Peter T. Mangione
President
Footwear Distributors and Retailers
of America

Ms. Angela J. Marshall Hofmann
Director of International Corporate Affairs
Wal-Mart Stores, Inc.

Ms. Linda A. Miller
Consultant
The Mills Corporation

Ms. Josephine I. Mills
Executive Director, Global Government Affairs
Avon Products, Inc.

Joel R. Platt, Esq.
Vice-President
BGE, Ltd.

Mr. Charles A. Prescott
Vice President, International Business Development
and Government Affairs
The Direct Marketing Association, Inc.

Mr. Matthew R. Shay
President
International Franchise Association

Mr. James C. Tuttle
Chairman and Chief Executive Officer
Tuttle International Group

V. Advisory Committee Opinion on Agreement

It is the view of the members of ITAC 5 that the principal benefits of the Panama TPA will be to U.S. foreign policy interests in this region of Latin

America, but that the economic benefits of this agreement to the United States are likely to be quite modest. However, in broad terms the agreement with Panama will, on balance, promote the economic interests of the United States, largely achieve the applicable overall and principle negotiating objectives, and provide for general equity and reciprocity within the distribution services sector.

Market Access for Distribution Services

Overview

While meaningful market access commitments are important for all U.S. service industries, it is the opinion of this committee that there are two keystone services sectors in trade agreements, which generate a wide range of ancillary benefits. In turn, those ancillary benefits help provide the foundation for economic reform in trade partner countries and enhanced market access for other goods and services sectors in the United States. The first of those keystone sectors is financial services; the second is distribution services.

There are numerous benefits from good market access commitments in distribution services that accrue well beyond those companies solely in retailing, wholesaling, franchising, and commission agents. Distribution services represent the last link on the trade chain to the ultimate consumer. As such, distribution service companies create new markets for U.S. manufacturers, agricultural and food processors, and other types of service providers to foreign customers.

Distribution is also the only services sector that involves the movement and sale of goods, thereby providing an important nexus between market access for services and goods. Finally, retailers, wholesalers, and other distribution service providers require a large network to support their business and commercial operations in such diverse areas as transportation, warehousing, financial services, communications, advertising, and professional services.

Within the distribution services sector, there are a number of specific situations that will benefit from the TPA with Panama. Heretofore, U.S. franchise restaurants, for example, operating in Panama have developed local operations utilizing local suppliers, including domestic agricultural interests. Unfortunately, when suitable local supply was unavailable or of insufficient quality, U.S. companies faced high duties and restrictive quotas to satisfy their distribution needs. The just-completed TPA with Panama strikes a balance that will benefit these operations, as they will be able to utilize an international supply and distribution network to obtain necessary products while remaining sensitive to local production options for products including agricultural products.

Analysis

The benefits of the market access commitments Panama has made in the distribution services sector under the TPA are, unfortunately, likely to be of very limited value to U.S. distribution services providers for the following reasons. Our system of trade agreements has developed as a hub-and-spoke model – with each agreement operating independently with slightly different rules. As agreements proliferate, the resulting system is making trade more, not less, complicated and expensive, and is largely inconsistent with the way U.S. distribution services companies do business and manage their supply chains.

First, U.S. distribution companies tend to view Central America – from Guatemala to Panama – as one market. For larger retailers looking to serve customers in Latin America, opening and supplying stores only in a small market like Panama is simply not economical. In order to realize economies of scale and maintain an efficient supply chain, a retailer may want to open one or two distribution centers near the major ports in the region outside of Panama to supply stores, outlets and restaurants throughout Central America. Unfortunately, that will not be possible in the case of Panama because it is not part of the Dominican Republic-Central American FTA (DR-CAFTA). As such, the trade barriers between Panama and its neighbors remain in place, which would impose unnecessary costs and delays on the movement of consumer goods through the supply chain.

Second, under a side letter to the TPA, Panama will still maintain a significant initial minimum investment requirement for U.S. retailers to open stores in the country. While this restriction may not adversely impact large retailers, it will effectively exclude smaller retailers, for which the cost of opening a store is substantially lower. Currently, smaller companies account for much of the investment in retail operations by U.S. retailers in Central America.

Third, even if retailers do open stores in Panama and the rest of Central America, they have the challenge of stocking those stores in the face of trade barriers that many Latin American countries impose, mainly through antidumping and safeguards actions, against imports from China and other Asian countries. Since Asian countries represent the main source of most consumer goods, these barriers can present a sizable obstacle to maintaining a viable retail operation. The inability to overcome such barriers to supply their stores has led a number of U.S. retailers in Latin American countries such as Argentina, Brazil and Mexico, to shut down their operations and leave.

This situation is not helped by the unwillingness of the United States to address any meaningful reform to trade remedies laws in its trade agreements. Although it will not correct this particular problem, one good start would be to exempt bilateral trade agreement partner countries from the antidumping law. Since a trade agreement precludes the ability of a country to maintain a sanctuary market, the major argument underpinning the application of antidumping remedies ceases to exist.

Finally, Panama is a relatively insignificant supplier of consumer products for the U.S. retail market, and it is unlikely to develop any new capacity as a sourcing location under this TPA. In particular, although Panama is not a significant producer of apparel, the Central American region as whole is. Under the right circumstances, Panama would have the opportunity to develop this part of its economy in partnership with the United States and other countries in the region. Unfortunately, this opportunity is precluded by restrictive rules of origin, and the fact that there is no ability to link the Panama TPA with other trade agreements in the region – NAFTA, DR-CAFTA, and recently-completed Peruvian and Colombian FTAs – to develop a hemispheric production platform that could compete effectively with Asia.

In its comments on other trade agreements, ITAC 5 has repeatedly expressed its opposition to the yarn-forward rule of origin for textiles and apparel, which is also contained in the Panama TPA. Under this rule, only apparel made from yarn and fabric originating in Panama or the United States can qualify for duty-free treatment.¹ It is the view of this committee that a yarn forward rule of origin retards rather than promotes textile and apparel trade with our trade partner countries, and encourages the continuing shift of production to China and other Asian suppliers.

This problem is exacerbated by the fact that, unlike the DR-CAFTA, the agreement with Panama contains no additional flexibility in the use of non-originating inputs through tariff preference levels or the ability to cumulate inputs from other trade partner countries in the production of qualifying apparel. Cumulation is a particularly critical element because it would provide a basis for developing a hemispheric-wide production platform in which regional apparel and textile manufacturers could compete more effectively with China and other Asian countries.

The ability to cumulate inputs from other trade partner countries in the production of qualifying goods could also provide a means to link our system of trade agreements. A trade agreement with Panama in and of itself offers little economic benefit. However, a trade agreement system that can link Panama with other countries in the region with which the United States has trade agreements does promise considerable economic benefits.

In the end, all these problems end up creating at best no new incentives and, at worst actual disincentives for U.S. distribution services providers to increase trade and investment with Panama and other trade partner countries. This problem underscores the fact that we need to rethink our bilateral trade agreement model. In particular, we need to rationalize, simplify, and link our

¹ For a more detailed analysis of the deficiencies of the yarn-forward rule of origin, refer to the ITAC 5 comments on the Peruvian TPA, which has similar rules on textiles and apparel to the Panama TPA.

trade agreements to provide U.S. companies greater economies of scale from our trade agreement system, which would, in turn, enhance their global competitiveness.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Holwill", with a long horizontal flourish extending to the right.

Richard N. Holwill
Chair
ITAC 5