

The U.S.-Panama Trade Promotion Agreement (TPA)

**Report of the
Industry Trade Advisory Committee on
Non-Ferrous Metals and Building Materials (ITAC-9)**

April 25, 2007

**INDUSTRY TRADE ADVISORY COMMITTEE ON
NON-FERROUS METALS AND BUILDING MATERIALS
FOR TRADE POLICY MATTERS (ITAC-9)**

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the United States-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 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 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.

This report is based on the draft of the TPA made available to Committee members for review in preparation of this report.

Pursuant to these requirements, the Industry Trade Advisory Committee on Non-Ferrous Metals and Building Materials (ITAC-9) hereby transmits the following report.

II. Executive Summary of Committee Report

ITAC-9 concludes that overall the U.S.-Panama Trade Promotion Agreement promotes the economic interests of the United States and achieves the negotiating objectives set forth in the Trade Act of 2002. However, as noted in Section V, two of the priority issues of ITAC-9 have not been satisfactorily addressed.

III. Brief Description of the Mandate of ITAC-9

The mandate of ITAC-9 is to provide advice and information on trade policy and trade negotiations issues that affect non-ferrous metals, building products and related products. These issues include market access, barriers to trade, tariff levels, discriminatory foreign procurement practices, information, marketing and advocacy needs of the sector, and other important trade issues. ITAC-9 represents all non-ferrous metals and a variety of building materials. The building materials include such items as wood buildings, mobile homes, cement, ceramic tile, aluminum windows, other miscellaneous metal products, builders' hardware, plumbing fittings, fixtures and supplies, and heating equipment. The non-ferrous metals elements of the Committee represent the aluminum, copper, zinc, precious metals, powder metals and other metals including mining processing, fabrication of basic shapes, manufacture of semi-fabricated products and recycling activities.

ITAC-9 and its members have provided advice on a range of issues including negotiations on the North American Free Trade Agreement (NAFTA); the World Trade Organization (WTO); the Asia Pacific Economic Cooperation (APEC); the Organization for Economic Cooperation and Development (OECD); trade relations with China, the Philippines, Eastern Europe, and the former Soviet Union; trade and labor issues; and environmental agreements as well as several recent bi-lateral trade promotion agreements.

IV. Negotiating Objectives and Priorities of ITAC-9

ITAC-9 advocates the following objectives and priorities in negotiating free trade agreements:

- **Coverage.** ITAC-9 has advocated adherence to the WTO requirement that trade promotion agreements include “substantially all” trade between the parties.
- **Staging of Tariff Elimination.** ITAC-9 urges U.S. negotiators to consider carefully competitive conditions in import-sensitive sectors before agreeing to schedules for the phase-out of tariffs in a free trade agreement. For certain non-ferrous metals and building products where foreign competition is intense, such as ceramic tile – where imports account for 80% of the U.S. market, an extended adjustment period is essential to ensure that the U.S. industry is able to remain competitive. At the same time, ITAC-9 advocates early opening of foreign markets for products that compete in export markets.
- **Rules of Origin.** Unless rules of origin are properly specified, trade agreements can have serious unintended consequences that disadvantage U.S. exporters. ITAC-9 advocates that all trade agreements include sector-specific rules of origin at least as rigorous as those contained in the North America Free Trade Agreement.
- **Standards.** Product standards and related licensing, testing, marking, product descriptions, and other technical regulation issues have become major barriers to U.S. exports of products which the Committee seeks to eliminate.
- **Government Procurement, Panama Canal.** Currently, most small-and- medium-sized contracts for Panama Canal Zone refurbishing are being reserved for Panamanian contractors and suppliers only, thus excluding most small US businesses and manufacturers from the most important construction market in Panama. A high-priority negotiating objective for ITAC 9 is the removal of this trade barrier against small-and-medium-sized U.S. exporters.

V. Advisory Committee Opinion on Agreement

ITAC-9 concludes that overall the U.S.-Panama Trade Promotion Agreement promotes the economic interests of the United States and achieves the primary objectives set forth in the Trade Act of 2002 with the exceptions noted under “Staging of Tariff Elimination” and “Government Procurement, Panama Canal.”

- **Staging of Tariff Elimination.** It is the position of ITAC-9 that the economic interests of some highly import sensitive and import impacted industries in the building materials and non-ferrous metals sectors of the economy are not served and will be adversely affected by this agreement to the extent that the current unilateral, time-limited, regularly reviewable and soon to expire grants of duty free access to the U.S. market for designated products under the Caribbean Basin Initiative (for which

benefits the recipient countries initially and regularly thereafter must demonstrate that they qualify) have been automatically adopted and transformed to become the starting point for granting Panama immediate, permanent, non-reviewable, bilaterally obligated, and non-revocable zero duty access for these highly sensitive products, with no tariff reduction staging over time. We find no justification regarding the economic interests of adversely affected U.S. industries in converting, ab initio, these unilaterally granted, qualification based, time limited, and revocable CBI duty free gifts to Panama on selected products into immediate, permanent, bilaterally bound zero duty status as a starting point for the Panama TPA, thereby eliminating any possibility of appropriate and critical staged tariff reduction treatment for some of our most import sensitive and import impacted industrial products.

- Rules of Origin. Because U.S. exporters depend on clear and uniform rules of origin, ITAC-9 supports the use of more sector-specific rules of origin such as those incorporated in the Free Trade Agreements with Chile and CAFTA.
- Environmental/Labor Issues. The Committee supports use of side-agreements, as opposed to inclusion of these matters in the core text of the TPA. The Committee believes this encourages private-sector cooperation toward furthering the advancement of environmentally sustainable economic development and equitable labor standards. The Committee is also concerned about suggestions in the Agreement that appear to approve use of measures to achieve environmental goals in the context of multilateral environment agreements (MEAs). While theoretically laudable, this language contains no counterbalance to assure that these trade measures are the least disruptive necessary to meeting those goals. There are also likely to be situations where either the U.S. or Panama is not a party to the MEA in question. Use of trade measures by the Party to achieve the goals of the MEA under those circumstances would not be acceptable to the non-Party.
- Dispute Settlement. A cooperative dispute settlement procedure, aimed at encouraging compliance with the provisions of the TPA is essential.
- Standards. The Committee supports the provisions in the Agreement for cooperation on technical regulations, standards, and conformity assessment procedures. Standards and related licensing, testing, marking, product descriptions, and other technical regulation issues are major barriers to U.S. exports of products of Committee members.
- Government Procurement, Panama Canal. The Agreement does not meet the objectives of ITAC 9 for Government Procurement. The Agreement will allow the Autoridad del Canal de Panama to sharply limit U.S. access to procurement contracts of less than \$593,000 for goods and services and less than \$10.3 million for construction services. The Agreement contains no provision restricting the Autoridad from dividing large contracts into smaller contracts in order to exclude U.S. participation. This trade barrier will be automatic for 12 years, and can be extended by agreement of the U.S. and Panama.
- General Provisions. The Committee believes that the allocation of the resources of the USTR and the Department of Commerce and the ITAC trade advisory process should be reviewed. The multiplication of bilateral trade negotiation, in many cases with countries of very limited general trade potential for most economic sectors, has the potential of diverting attention from multilateral negotiations of overriding importance to U.S. trade and prosperity. While the efforts and performance of government agencies in pursuit of bilateral agreements have been commendable, a reassessment of negotiating priorities and reevaluation of the overall benefits of current efforts could lead to expanded progress in global trade liberalization.