Agricultural Technical Advisory Committee for Trade in Sweeteners and Sweetener Products

April 22, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Zoellick:

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 Sweeteners and Sweetener Products Agricultural Technical Advisory Committee on the US-Dominican Republic (DR) Trade Agreement, reflecting majority and minority advisory opinions on the proposed Agreement.

Sincerely,

Jack Roney
Chair

Agricultural Technical Advisory Committee for Trade in Sweeteners and Sweetener Products

The U.S.-Dominican Republic Free Trade Agreement (FTA)

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Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S.-Dominican Republic (DR) 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 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, the Agricultural Technical Advisory Committee for Trade in Sweeteners and Sweetener Products hereby submits the following report.

II. Executive Summary of Committee Report

Majority Opinion: In the opinion of the majority of the Sweeteners ATAC, negotiations on sugar in bilateral or regional FTAs do nothing to advance the principal negotiating objectives of the sugar and sweetener industry, which can only be achieved in the World Trade Organization. On the contrary, the granting of additional market access commitments on sugar in FTAs would have a highly disruptive effect on the U.S. sugar market and would jeopardize the viability of the U.S. domestic program for sugar – while doing nothing to address the pervasive governmental policies that have grossly distorted the world sugar market. Thus, we have long urged the Administration to focus its efforts on WTO negotiations and to reserve negotiations on sugar exclusively for that forum.

The proposed agreement cannot be evaluated in isolation from the proposed CAFTA with the five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), of which it is part and parcel. The FTA with the DR and the CAFTA would push a substantial additional quantity of sugar onto an already oversupplied U.S. market. It would immediately increase the burden on U.S. sugar producers (who already hold 744,000 short tons of "blocked stocks") to either reduce production or increase stock holdings. On top of the import commitments under the WTO and NAFTA, the commitments in the proposed FTA with the DR and CAFTA threaten to make the no-cost domestic sugar program inoperable and are, therefore, inconsistent with the stated Administration position that domestic agricultural support programs will not be negotiated in FTAs.

Moreover, the DR and CAFTA commitments themselves cannot be looked at in isolation. The Administration is pursuing FTA negotiations with a formidable number of other countries that are major exporters of sugar. All of these countries will be seeking access to the U.S. sugar market that is comparable to, or greater than, the access offered to the DR and CAFTA.

In the majority view, the proposed FTA with the DR and the CAFTA as they stand do not promote the economic interests of the United States, achieve the negotiating objectives set forth in the Trade Act of 2002, or provide equity and reciprocity within the sugar and sweetener sector. We reiterate the industry's call to the Administration to reconsider and reverse the disruptive additional market access commitments on sugar it has offered in these FTAs.

Minority Opinion: We support the addition of the Dominican Republic to the Central America Free Trade Agreement (CAFTA). By including sugar in the Dominican Republic FTA, USTR has demonstrated that the Australia FTA is *not* necessarily the "template" for subsequent agreements. The quantities of sugar involved in this agreement are extremely modest – unnecessarily so, in our judgment. Nevertheless, we feel that the Dominican Republic FTA is fundamentally consistent with the principles of comprehensive trade liberalization, and like the broader CAFTA holds the promise of enhancing mutual trade opportunities, advancing U.S. foreign policy and strengthening regional democratic institutions.

III. Brief Description of the Mandate of the ATAC Committee for Trade in Sweeteners and Sweetener Products

The advisory committee is authorized by Sections 135(c) (1) and (2) of the Trade Act of 1974 (Pub. L. No. 93-618), as amended, and is intended to assure that representative elements of the private sector have an opportunity to make known their views to the U.S. Government on trade and trade policy matters. They provide a formal mechanism through which the U.S. Government may seek advice and information. The continuance of the committee is in the public interest in connection with the work of the U.S. Department of Agriculture (USDA) and the Office of the U.S. Trade Representative. There are no other agencies or existing advisory committees that could supply this private sector input.

IV. Negotiating Objectives and Priorities of ATAC Committee for Trade in Sweeteners and Sweetener Products

It is the opinion of the majority of the Sweeteners ATAC that, in evaluating whether an agreement promotes the economic interests of the United States and achieves the negotiating objectives of the Trade Act of 2002, several provisions of the Trade Act are of particular importance to the Committee:

- Section 2102(a)(2) establishes as one of the overall U.S. trade objectives: " the elimination of barriers and distortions that… distort U.S. trade;"
- Similarly, Section 2102(b)(1)(A) establishes as one of the principal trade negotiating objectives: "to obtain fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that …distort United States trade;"
- Section 2102(b)(7)(A) sets as a principal negotiating objective regarding the improvement of the WTO the extension of WTO coverage "to products, sectors, and conditions of trade not adequately covered;"
- Section 2102(b)(10)(A)(iii), (vi), (viii) establishes as principal negotiating objectives: the reduction or elimination of subsidies that "unfairly distort agriculture markets to the detriment of the United States;" the elimination of government policies that create price-depressing surpluses; and the development, strengthening and clarification of rules and dispute settlement mechanisms to eliminate practices that distort agricultural markets to the detriment of the U.S., "particularly with respect to import-sensitive products."
- Finally, we would note that Section 2102(b)(10)(A)(xvi) directs the Administration to recognize "the effect that simultaneous sets of negotiations may have on United States import-sensitive commodities (including those subject to tariff-rate quotas)."

The above-mentioned provisions are of special importance to the U.S. sugar and sweetener industry because the world sugar market is generally acknowledged to be the most distorted commodity market in the world. It is a market characterized by chronic dumping. For two decades, average world sugar market prices have averaged less than half the world average cost of producing sugar. This pervasive dumping has been facilitated by government policies, some of them well known and transparent, others opaque and poorly understood. Virtually every sugar producing nation's government has provided a heavy dose of trade-distorting government intervention and support to its industry. The U.S. sugar import program was developed to buffer U.S. producers against the disastrous impact of such dumped and subsidized competition.

U.S. sugar producers believe that this highly dysfunctional market can only be restored to health by comprehensive, global negotiations in the WTO that cover the whole range of trade-distorting policies that affect the world sugar market, indirect and/or non-transparent as well as policies and practices of a more direct and transparent nature. Thus, we believe that negotiations on sugar should be reserved exclusively for the WTO and should not be pursued in the negotiation of bilateral or regional trade agreements.

Negotiation of further market access commitments in FTA agreements would undercut the much more important efforts underway in the WTO to reform the world sugar market, expose the U.S. market to ruinous world dump market prices, and severely disrupt the U.S. sugar import and domestic program.

The U.S. sugar market is already seriously oversupplied, with “blocked stocks” of 744,000 tons being held, at their own expense, by U.S. sugar producers pursuant to the mandate of the Farm Bill to maintain a “no-cost” program. The granting of increased market access in FTA negotiations, on top of existing U.S. import obligations under the WTO and NAFTA, would “trigger off” the marketing allocation system underpinning the domestic support program, thus making the domestic program unworkable and causing the forfeiture of hundreds of thousands of tons of sugar now pledged as loan collateral to the Commodity Credit Corporation. Thus, we believe any negotiation of sugar market access in the context of FTAs is inconsistent with the Administration’s stated position that domestic support programs will NOT be negotiated in FTAs.

With respect to the last provision cited above, which directs the Administration to recognize the effect of “simultaneous sets of negotiations,” we would point out that the Administration continues to evade requests that it put forth a coherent analysis of the impact of its negotiations on sugar in the whole range of FTAs being pursued on the U.S. sugar market and our domestic program and its plan for dealing with this impact. Instead, the Administration insists that each FTA negotiation on sugar must be treated individually (i.e., piecemeal).

The Sweeteners ATAC has outlined its views to the Administration on this matter on numerous occasions.

V. Advisory Committee Opinion on Agreement

Majority Opinion: We would note that while the U.S. is a large net importer of sugar and sugar-containing products (SCPs) and the DR and the CAFTA countries, as a whole, are one of the world’s largest exporters of sugar, all maintain policies aimed at shielding their domestic producers from the world dump market. The U.S. utilizes a WTO-legal tariff-rate quota system and a no-government-cost commodity loan program. The DR and the CAFTA countries maintain domestic sugar prices well above world dump market levels, protected by high tariffs and possibly other measures. It is also worth noting that CAFTA countries have *not* liberalized sugar trade as part of the FTA among themselves. The U.S., the DR, and the CAFTA sugar industries stand to gain from a comprehensive reform of the grossly distorted world sugar market through WTO negotiations. In fact, the DR sugar industry has also taken the position the market access on sugar should not be negotiated in the FTA context but reserved for WTO negotiations.

Our comments on the specific elements of the text are limited to the chapter on agriculture and, more specifically, to those provisions affecting sugar and sugar-containing products. The proposed agreement with the DR provides for additional duty-free access for sugar and certain SCPs of 10,000 metric tons (mt) in the first year of the agreement; this amount would increase to 12,800 mt by year 15 and would continue to increase 200 mt each year in perpetuity thereafter. (This would be on top of the minimum of 185,335 mt under the WTO-bound TRQ that the DR, which has the largest allotment under our WTO-bound TRQ, has traditionally enjoyed.)

For the DR and CAFTA as a whole, the proposed agreement provides for additional duty-free access for sugar and certain SCPs totaling 109,000 mt in the first year of the FTA and rising to 153,140 mt by year 15; thereafter, the TRQ provided under the FTA would increase in perpetuity by 2,640 mt each year. This increased access would be in addition to the access provided under the WTO-bound TRQ, which has traditionally provided the to the DR and CAFTA countries a minimum of nearly 312,000 mt annually.

As is the case with the CAFTA, the second-tier tariff (for imports outside of TRQs) was not eliminated or reduced. We appreciate the Administration's attention to our concerns on this point. We hope that it reflects recognition of the disastrous impact of such reduction and elimination on the U.S. sugar industry and our domestic program – and the flagrant inconsistency of such an action with the broad Administration policy that domestic support programs will not be negotiated in FTAs.

The increased access through TRQs described above, however, will by itself have a highly disruptive effect on the U.S. sugar market. As noted previously, the U.S. market is already badly oversupplied, with U.S. producers holding 744,000 st of "blocked stocks" in accordance with provisions of the marketing allocation program put in place by the 2002 Farm Bill. Despite the imposition of restrictions on domestic marketing of sugar through this program, sugar prices have fallen into the forfeiture range, raising concerns as to whether the program's mandate – that it be operated at no-cost to the government – will be fulfilled. It is very likely that marketing allocations will need to be tightened further next year. Under these circumstances, every additional ton of sugar imported means an equivalent decrease in U.S. production or increase in U.S. stockholdings.

We have also witnessed over the past few years a very troublesome decline in U.S. sugar consumption. After nearly fifteen years of growth, averaging 151,000 st annually, consumption has declined by an average of 136,000 st over the past three years. The reasons for this decline, and whether they will continue to hold sway, are not yet entirely clear. If the decline continues, however, the difficulty of managing the domestic program, and the burden placed on it by the DR and CAFTA commitments, will increase substantially.

We must also point out that the increased import commitments in the DR FTA and the CAFTA pose a very specific and real threat to the operation of the domestic program in that it is quite likely at some point to "trigger off" the marketing allocation program. When the

Congress established this program in the 2002 Farm Bill, it provided that the program can only operate as long as imports for domestic use remain below 1.532 million short tons; if imports rise above that, the marketing allocation program is "triggered off." Congress arrived at this figure by adding the WTO-imposed import minimum of 1.256 mst to the NAFTA-imposed imports from Mexico of up to 276,000 st of Mexican net surplus production.

Congress' view, essentially, was that these import commitments, amounting to more than 15 percent of U.S. sugar consumption, were sufficient and that it would be unfair to impose marketing restrictions on American producers if imports exceed these committed levels. Additional imports would be appropriate only in the event of U.S. market growth and/or production shortfalls. Congress did not intend for additional access granted in FTAs to further shrink American sugar producers' share of their own market.

Actual imports this year and last have been at the WTO minimum because Mexico has not had any surplus sugar to send to the United States. This left a gap of about 276,000 st between actual imports and the marketing-allotment trigger. But if Mexico has a large crop and returns to surplus-producer status, as is expected this year, much, or all, of that 276,000 st could again be allocated to Mexico. Only the balance, if any, would be available for additional FTA access, and only in the short run.

Furthermore, U.S. and Mexican sugar and corn sweetener industry leaders have made significant progress toward a framework settlement of U.S.-Mexican sweetener trade issues, and may soon present that framework for prompt government-to-government negotiation. These representatives have assumed that all of the access promised to Mexico in the NAFTA is still available to Mexico.

Assuming Mexico achieves its maximum access of 276,000 st, the DR and CAFTA concessions of 109,000 st would push total imports well over the 1.532-mst trigger. We are concerned that the CAFTA's "stocks management" option, which is supposed to enable the United States to avoid physical import of the additional CAFTA sugar, may prove to be unsustainable. It would probably have to be used each year for the entire amount of import obligations in the CAFTA and in any subsequent FTAs that include sugar.

While we believe the arguments put forward above convincingly demonstrate the unacceptable damage that would be done to the industry by the sugar provisions in the DR FTA and the CAFTA, these proposed agreements cannot be looked at in isolation from the broader FTA initiatives of the Administration. The countries with which the U.S. is pursuing FTAs export in total over 27 million metric tons (23 million excluding Australia), nearly three times U.S. consumption.

While it is true that the Administration has excluded sugar from market access negotiations in the proposed FTA with Australia (and we applaud that decision), it is by no means assured that they will take the same position in other FTA negotiations. Indeed the Administration has made clear that sugar remains on the table in all these negotiations and that each negotiation will have to be evaluated individually. The distinction between developed and developing made by Ambassador Zoellick in explaining the decision to exclude sugar from the Australian talks is hardly reassuring—all other prospective FTA countries are developing countries.

From the perspective of the U.S. sugar industry, the proposed agreements with CAFTA and the DR set a terrible precedent. All of the other sugar-exporting FTA countries – South Africa, Thailand, Panama, the Andean countries, along with Brazil and the remaining countries of the FTAA – will seek to equal or better the concessions given in the CAFTA. Additional access granted in these negotiations will greatly exacerbate the disruptive effects described above.

Two other provisions of the agreement warrant our comments:

- Paragraph 3(d) of Annex 3.3 limits duty free treatment under the FTA to the amount of the trade surplus in sugar as defined in that paragraph. While this provision would not impose a constraint on any of the five CAFTA countries, it could prevent the DR from realizing all or part of the additional access made available under the proposed FTA at least in the early years of the agreement. However, such eligibility could be established by a relatively small amount of exports to destinations other than the U.S and would require only a modest increase in current levels of DR production (which have been set back in recent years by hurricane damage.)
- Article 3.15 of the chapter on Agriculture establishes a “sugar compensation mechanism” which allows the U.S. to compensate DR or CAFTA exporters in lieu of according duty-free access to all or part of the TRQ established by the FTA. Little detail is provided about this mechanism except that the compensation “shall be equivalent to the economic rents” exporters would have enjoyed as a result of sales to the U.S. and that the U.S. must provide 90 days notice and be willing to enter into consultations on the matter. We have grave doubts about the efficacy of this provision. Will the compensation be provided in cash or goods? If the former, will Congress provide such funding? If the latter, will this upset commercial trade and possibly raise WTO concerns? While it may be helpful to deal with a slight excess of imports, this device could not be effectively used over the long run to avoid disruption of the domestic sugar program if the expected imports from Mexico materialize and/or if additional access is granted in other FTA negotiations.

In light of the reasons detailed above, we find that the proposed FTA does NOT provide equity and reciprocity in the sugar and sweetener sector. With respect to the broader question of whether it promotes the economic interests of the U.S. and achieves the applicable overall and principal negotiating objectives of the Trade Act of 2002, we must again point out that this and other FTAs can do nothing to advance the principal negotiating objectives or economic interests of the sugar and sweetener industry. These objectives can only be achieved in the WTO and we again urge the Administration to focus its efforts on those negotiations and to reserve negotiations on sugar exclusively for that forum. On the contrary, we believe that the proposed FTA with the DR and CAFTA will seriously harm the economic interests of the U.S. sugar industry and by extension those agricultural, business and community interests whose livelihood is closely linked to the health of our industry; and that it will undercut our broader negotiating objectives.

Thus, we find that the proposed FTA with the DR and CAFTA as they stand do NOT promote the overall economic interests or negotiating objectives of the U.S. We again urge the Administration to reconsider and reverse the disruptive additional market access commitments offered in the proposed FTA.

Minority Opinion: We support the addition of the Dominican Republic to the Central America Free Trade Agreement (CAFTA). The reasons for our support are quite similar to those we listed in supporting CAFTA itself. We respectfully refer USTR to those earlier comments for a more extended discussion, but will reiterate two points:

First, we commend USTR for including sugar in the Dominican Republic FTA. USTR has acted appropriately in concluding a comprehensive agreement, despite the loud demands of the U.S. sugar lobby that sugar be excluded. USTR's action is especially important since it follows the decision – profoundly mistaken, in our view – to exclude sugar from the Australia Free Trade Agreement.

By including sugar in the Dominican Republic FTA, USTR has demonstrated that the Australia FTA is *not* necessarily the "template" for subsequent agreements. Instead, USTR has added a new member – the Dominican Republic – to CAFTA, and has followed CAFTA precedents in doing so.

Second, the quantities of sugar involved in this agreement are extremely modest – unnecessarily so, in our judgment. The initial Dominican Republic FTA quota of 10,000 metric tons is a minuscule quantity in the context of the overall U.S. sugar market, and it is astonishing that U.S. interests would oppose even such a small amount for a country whose citizens, in many cases, live in poverty.

The Dominican Republic differs from other CAFTA countries in that its additional imports may be initially constrained by the requirement to calculate its net trade surplus. With exports generally devoted already to the U.S. tariff rate quota (TRQ), it is not clear that the Dominican Republic will enjoy additional market access in the short term.

If this is the case, it would be an ironic result. Per capita gross domestic product (GDP) in the Dominican Republic is only $2,511, significantly less than that of Costa Rica. Yet Costa Rica will enjoy increased access to the lucrative U.S. sugar market as a result of CAFTA, while the Dominican Republic may not, at least in the short term. To the extent that an important rationale for FTAs is to provide economic growth opportunities to low-income countries, this is a strange result.

Despite these misgivings, we feel that the Dominican Republic FTA is fundamentally consistent with the principles of comprehensive trade liberalization, and like the broader

CAFTA holds the promise of enhancing mutual trade opportunities, advancing U.S. foreign policy and strengthening regional democratic institutions. We support the agreement.

VI. Membership of the Sweeteners and Sweetener Products ATAC

Agreeing to Majority Opinion:

Ms. Margaret O. Blamberg	American Cane Sugar Refiners' Association
Mr. Van R. Boyette	Okeelanta Corporation
Ms. Sarah A. Catala	U.S. Sugar Corporation
Mr. Otto A. Christopherson	Christopherson Farms
Mr. Troy Fore	American Beekeeping Federation, Inc.
Mr. Benjamin A. Goodwin	California Beet Growers Association, Ltd.
Mr. Patrick D. Henneberry	Imperial Sugar Company
Mr. James Johnson	U.S. Beet Sugar Association
Mr. Kent Peppler	Kent Peppler Farms
Mr. Don Phillips	American Sugar Alliance
Mr. Kevin Price	American Crystal Sugar Company
Mr. Jack Roney	American Sugar Alliance
Mr. Charles Thibaut	Evan Hall Sugar Coop., Inc.
Mr. Don Wallace	American Sugar Cane League
Mr. Dalton Yancey	Florida Sugar Cane League, Inc.

Agreeing to Minority Opinion:

Mr. Thomas C. Earley	Promar International
Mr. Robert R. Green	McLoed, Watkinson and Miller
Mr. Alfred Hensler	Masterfoods USA
Mr. Roland E. Hoch	Global Organics, Ltd.
Mr. Kenneth Lorenze	Kraft Foods

Member not Participating in this Opinion:

Ms. Linda K. Thrasher	Cargill, Inc.