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**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Under Secretary for International Trade**  
Washington, D.C. 20230

BY:-----

March 10, 2005

Deborah A. Garza, Chair  
Antitrust Modernization Commission  
1120 G Street, NW  
Suite 810  
Washington, DC 20005

Dear Ms. Garza:

This letter is in response to the recent decision by the Antitrust Modernization Commission to study whether the 1982 Export Trading Company Act ("ETC Act") should be eliminated.

On behalf of the United States Department of Commerce, the primary administering agency regarding the ETC Act, I am writing to provide you with our perspective, and to offer our continuing assistance as the Commission studies the ETC Act.

We believe that it is imperative to retain the ETC Act, because, just as Congress intended, it is working to overcome hurdles to exporting that keep many U.S. firms from competing effectively in international markets. More than 5,200 firms representing a broad spectrum of United States industry and agriculture currently take advantage of the ETC Act, representing upwards of \$15 billion in export activity in 2002 and 2003.

The ETC Act is thus an essential component of a broad United States effort to promote and enhance the competitiveness of U.S. firms in the global marketplace.

This broad effort to promote the export competitiveness of United States firms features a number of complementary programs in the Department of Commerce and elsewhere designed to assist exporting firms, especially small and medium sized businesses, in overcoming numerous barriers to market entry.

Barriers to market entry may be something as relatively straightforward as lack of information about export opportunities, a lack of data about suppliers, or a lack of knowledge about qualified foreign buyers and distributors.

In these types of cases, through programs operated by the U.S. Commercial Service and other Commerce Department agencies, we respond to export-oriented firms that seek our help by assisting them in crafting and implementing an export strategy that helps reduce or eliminate these barriers to entry. Similarly, we help the thousands of



American firms operating under ETC Act Certificates address specific export needs that they would not be able to effectively address on their own.

For example, ETC members frequently pool their resources to take advantage of large volume export sales orders that they otherwise would not be able to fill on their own. They also use their acquired ETC leverage to reduce export unit costs, for example, by consolidating their shipments and negotiating for volume discounts on export transportation rates, warehousing, and other export services. In addition, by working together as an export unit, ETC members often share the costs of exporting. Such coordination includes sharing the costs of developing new export business, and splitting the costs of export trade facilitation services.

Title III antitrust preclearance also gives U.S. industry the flexibility to design ETCs that meet new challenges in the global marketplace.

One new ETC export function, for example, is the administration of U.S.-negotiated Tariff Rate Quotas (TRQs). Because these administrative ETCs provide U.S. industry with the necessary legal structure and preclearance to take advantage of reduced tariff rates, the United States Trade Representative has recommended the use of ETCs in some Free Trade Agreements.

While TRQs are not always the United States' first choice for obtaining market access—unencumbered access to foreign market access is always the first and best choice—they are nevertheless very useful in gaining valuable new access to markets that have been protected by quotas or other non-transparent barriers to trade. ETC Certificates are especially useful and important when a U.S. industry is administering a TRQ, because U.S. firms are allocating the product to export. An example of such a TRQ includes the Association for the Administration of Rice Quotas, Inc. (AARQ), which administers a TRQ with Europe.

Furthermore, eliminating the ETC Act would create a competitive disadvantage for United States exporting firms. United States Department of Commerce research indicates there are at least twelve other countries with laws providing explicit antitrust exemptions for joint export activities, including such major trading partners as Australia, Canada, India, and Mexico.

Of course, ETC Act Certificate holders are not exempt from U.S. antitrust laws. The ETC Act Certificate simply provides a mechanism that enables export market participants who seek to attain cost efficiencies and other benefits to voluntarily submit their contemplated activities to advance scrutiny by enforcement authorities. Since ETC Act Certificate holders are not exempt from U.S. antitrust laws, there is no adverse effect on United States consumers. On the positive side, U.S. workers, farmers, and agricultural producers clearly benefit from the more robust participation of United States companies in foreign markets.

Finally, as the Department of Commerce noted in the January 2004 report on its comprehensive review of issues affecting the United States manufacturing sector, United States exports of manufactured goods have fallen significantly in the past two years.

In twenty roundtable events held throughout the United States, U.S. manufacturers told Commerce Secretary Don Evans, Treasury Secretary John Snow, Labor Secretary Elaine Chao, and other senior government officials, that one effective way to address this downturn in manufactured exports is through an expanded export promotion strategy aimed at securing foreign market access that United States trade negotiators have obtained. The ETC Act is an integral part of that strategy.

Accordingly, we strongly believe that because repealing the ETC Act would remove a unique and vital federal program that well serves the U.S. economy, it should be retained in U.S. law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Grant D. Aldonas', with a long horizontal line extending to the right.

Grant D. Aldonas