

April 22, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Executive Office of the President
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 Industry Sector Advisory Committee for Trade Policy Matters, Services (ISAC 13) on the U.S.- Dominican Republic Free Trade Agreement reflecting consensus on the proposed Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Vastine".

Robert Vastine
Chairman, ISAC 13

**The U.S.-Dominican Republic
Free Trade Agreement**

**Report of the
Industry Sector Advisory Committee on Services
for Trade Policy Matters (ISAC 13)**

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Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13)

Report to the President, the Congress and the United States Trade Representative on the U.S.-Dominican Republic 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 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 Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13) hereby submits the following report.

II. Executive Summary of Committee Report

The Committee supports the U.S.-Dominican Republic Free Trade Agreement because it achieves services and investment liberalization substantially greater than that to which the Dominican Republic is committed in the WTO General Agreement on Trade in Services (GATS). It compliments the Agreement with the five Central American Republics (CAFTA), which the Committee endorsed in an earlier report. In combination with that Agreement, the Chile FTA, and possible agreements with Panama, Colombia and three other members of the Andean Pact, the United States will have secured substantial trade liberalization commitments with a large segment of the economy of Latin America. When implemented these Agreements should have a marked effect on economic development and general welfare in the region.

The Practical Effect of the “Negative List” Negotiating Method

These Agreements underscore the importance of the “negative list” negotiating method. Under this method the parties agree to texts, or chapters, spelling out rules for liberalization of services, financial services, telecommunications, and investment. The parties then list in separate annexes those elements of their services economy that they want to exclude from the rules set forth in the chapters. Thus, when texts have been agreed, the negotiations focus on the exclusions, or non-conforming measures (NCMs).

Negotiators of each party attempt to reduce the scope of these exclusions in order to obtain greater commercial advantage. An important aspect of this method is that, unless a party succeeds in excluding a future service, all new services will be automatically covered and thus be freely traded. This is particularly important in highly innovative sectors like computer and related services, as noted in the discussion of that sector, below. The result is that the U.S. FTAs with the Dominican Republic/CAFTA, and other countries, should result in much greater liberalization than the GATS, which relies, regrettably, on the positive list method of negotiation.

If there is a disadvantage to the negative list method, it is that the negotiation of separate FTAs results in different lists of NCMs for each country, each reflecting the particular economic and political forces at work within that country. Thus, while the texts of the US FTAs with Latin countries, and others, may be similar or nearly similar, the NCMs are often quite different. This can mean different rules in each country for U.S. businesses operating in the same sector.

Advantages and Exceptions in the Agreement

So in the case of the Dominican Republic there are substantial commitments to free trade, but also exceptions that have not been seen in other Agreements, as well as some that are common to other Agreements.

For accounting, the Agreement will permit the large U.S. networks to continue to do business, but it contains a requirement that only Dominican nationals may practice as CPAs, which prevents smaller firms and single practitioners from doing business there.

In asset management, the Agreement permits the cross-border provision of portfolio management services by asset managers, but the Dominican Republic reserves the right to impose restrictions on acquisitions by foreign investors of certain government securities and securities of state enterprises.

For audio-visual services, the Agreement and a side letter commit the Dominican Republic to action against broadcast piracy, which is the single most important market access problem facing U.S. filmed entertainment providers. In addition the Agreement provides meaningful market access for audiovisual services.

The Agreement provides good commitments for computer and related services, express delivery, and legal services.

But it provides a unique and significant setback for healthcare services in the form of a new 10 percent tax on income to be paid by U.S. health professionals who enter the Dominican Republic to provide healthcare services, when they depart the country. The provision singles out health care professionals for adverse treatment. It has the highly perverse effect of discouraging U.S. healthcare workers from providing services in the Dominican Republic, which needs them.

The Agreement contains good market access and other provisions for U.S.

telecommunications providers. It unfortunately repeats the mistake made in CAFTA of carving out cost-oriented interconnection obligations for mobile telephone services.

Investment

The Agreement includes significant commitments with regard to investment, which is particularly important for trade in services because many services can only be “traded” by establishing a commercial presence (investing) in a foreign market. The Investment chapter provides significant new opportunities for market access for investment (as discussed in a sector-by-sector manner below) and includes high standard protections for such investment, including investor-state arbitration, the free transfer of capital and protections related to expropriation and fair and equitable treatment. The Committee is disappointed, however, by the prospective only protections for breaches of certain investment agreements between an investor and the foreign government.

Dealer Protection

A final important element in this Agreement is the Dominican Republic’s commitments regarding the application of its dealer protection law to dealer contracts with U.S. companies. The Committee welcomes these commitments that will ensure that key general contract law principles will apply to such dealer contracts in a manner that will reduce significantly distribution burdens for U.S. companies in the Dominican Republic.

Conclusion

This report is the last that will be filed by ISAC 13, the sectoral composition of which will be changed by the advisory committee reorganization that has taken place. In its current configuration ISAC 13 represents virtually all U.S. services sectors. Thus it has had the ability to weigh the achievements of the new U.S. FTAs from the standpoint of the entire U.S. services economy. The Committee has supported all the FTAs on the basis of their commercial effects. The FTAs are in themselves valuable because they have shown how much can be achieved in a bilateral negotiation.

However, the Committee regrets that, with the exception of Australia, larger and more significant economies were not chosen as FTA partners, because it has seen at very close range the very substantial commitment of skill and negotiating resources that has been required to conclude these Agreements, and because it understands how difficult it will be to achieve Congressional approval of some Agreements, even though they unquestionably merit that approval.

The Committee notes that a broader goal of the FTA program has been to stimulate competitive liberalization that will extend to the multilateral arena of the World Trade Organization, and it hopes that the intensive U.S. bilateral and sub-regional effort will indeed generate movement in the WTO toward truly multilateral liberalization that will build on the excellent progress that has been achieved in our agreements with these smaller economies. The Committee regrets that at this time the determined U.S. bilateral and sub-regional approach has not yet spurred movement in the Doha Development Agenda negotiations in the WTO, but earnestly hopes it will do so.

III. Brief Description of the Mandate of the ISAC 13

ISAC 13 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to the services sector. To fulfill its mandate the ISAC meets at least monthly to review negotiations with U.S. trade officials and to advise as required by law.

ISAC 13 advises the Secretary of Commerce and the U.S. Trade Representative (USTR) concerning the trade matters referred to in Sections 101, 102, and 124 of the Trade Act of 1974, as amended; with respect to the operation of any trade agreement once entered into; and with respect to other matters arising in connection with the development, implementation, and administration of the services trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions there under.

In particular, ISAC 13 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 or 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, which affect the services sector, and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of the ISAC 13

ISAC 13's overall goal is to liberalize trade in the wide range of services provided by U.S. businesses, thereby promoting the expansion and health of the U.S. economy and, by extension, the economies of its trading partners.

U.S. services industries provide about 87 million jobs, or 80% of total private sector employment. Most new jobs are services jobs. Between 1993 and 2003 services added 20.3 million new U.S. jobs.

According to the U.S. Bureau of Labor Statistics, 90% of all the 21.3 million new jobs to be created over the next 8 years will be services jobs.

ISAC 13's objective for this and other trade agreements is to achieve substantial additional market access for U.S. service industries. This means commitments to greater access to foreign markets for U.S. cross border trade, to investment abroad, and to the temporary movement of Americans who provide services.

With respect to the protection of U.S. investment abroad, ISAC 13's objective is to ensure high levels of protections for U.S. investors abroad, including protections related to national treatment and most-favored nation treatment, expropriation, fair and equitable treatment, full protection and security, the free transfer of capital, no performance requirements, investment agreements and investor-state dispute settlement.

ISAC 13 also sees an opportunity to advance U.S. policy objectives to liberalize foreign markets by focusing U.S. agencies' and private entities' efforts to provide technical assistance and trade-related capacity-building abroad, especially in developing countries and transitional economies. ISAC 13 believes that intensive technical assistance is imperative in many parts of the world if mutual trade liberalization goals are to be attained.

Finally, ISAC 13 appreciates the decision of the U.S. Government to pursue a *negative list* (or "top-down") approach and hopes this template is used when negotiating future bilateral and regional trade agreements.

V. Advisory Committee Opinion on Agreement

Overall, the Committee believes that the U.S.-Dominican Republic FTA meets the Committee's objective of achieving new and expanded trade and investment opportunities.

A. Crosscutting Provisions. The Committee's opinions on investment, movement of personnel (temporary entry), transparency, and dealer protection follow:

Investment

The Agreement will help promote a secure and predictable legal framework for U.S. investors in the Dominican Republic. Such provisions are of particular interest to service providers, whose services often require a local presence.

With respect to ensuring access to U.S. investment, the Agreement makes substantial progress in reducing the barriers to such investment. Overall, the Agreement assures U.S. investors greater opportunities to establish, acquire and operate investments in the Dominican Republic, except where specific reservations have been taken as discussed below in each of the sectoral areas. Such investors are to be accorded equal treatment with local investors and may not be subjected to special or discriminatory requirements for the use of local inputs or export obligations or to extend licenses to local companies. Rights to manage and direct such investments with personnel other than from the host country are also provided.

With respect to the protection of U.S. investment, the investment chapter of the Agreement generally contains the primary objectives sought by the Committee and included in the Trade Promotion Authority legislation, enacted as part of the Trade Act of 2002, including a broad definition of investment, the guarantee of prompt, adequate and effective compensation for expropriation, fair and equitable treatment, full protection and security, the free transfer of capital, no performance requirements, as well as the national treatment and most-favored nation provisions. Very importantly, the Agreement includes the investor-state dispute settlement mechanism that is vital to afford U.S. investors the opportunity to ensure that their investments are protected against arbitrary, discriminatory and unfair government actions. The Agreement also seeks improved transparency in

investor-state mechanism as sought by the Trade Act of 2002.

Nevertheless, the Committee is disappointed by several limitations in this Agreement. First, the Agreement fails to provide protection for existing investment agreements, defined as agreements relating to natural resources or other assets controlled by the foreign government. Such investment agreements are related to many key sectors of U.S. investment activity abroad, including natural resources, construction, infrastructure development, and computer and telecommunications networks. On several occasions, the Committee has expressed its views that breaches of such investment agreements should be covered in FTAs, as well as new BITs, given the important economic and security benefits such agreements provide to the United States. Given the lack of any concrete concerns expressed by U.S. negotiators with respect to any existing investment agreements between the United States and Dominican Republic investors, the Committee fails to understand why this important protection was limited to prospective agreements only.

Second, the Agreement could allow governmental restrictions on financial services activities, including the transfer of capital, through the operation of a broad prudential carve-out for financial services measures taken by the host government. The procedure developed to review whether a measure properly falls within the prudential carve-out is extremely lengthy and onerous, allowing not only a government-to-government review, but also a separate dispute settlement proceedings if the two governments cannot agree that the measure taken properly fits within the prudential carve-out.

Movement of Personnel

Unlike recent bilateral trade agreements, the Dominican Republic FTA does not include a provision for the temporary entry of key businesspersons. ISAC 13 is disappointed by the absence of such an important provision.

Skilled personnel are essential to world trade and investment. They are the means by which U.S. service companies provide services to their customers. Without the ability to move their personnel with speed and agility, American services businesses simply cannot fulfill their obligations to clients around the world. Thus, for a trade agreement to be commercially viable it should contain meaningful personnel mobility provisions.

As ISAC 13 has previously commented, U.S. service providers face complex, cumbersome and time-consuming requirements to obtain work permits and visas for their workers on short-term secondments and/or transfer to company facilities, projects or assignments in other countries. Increasingly, similar visa and other entry permit barriers face foreign employees and U.S. employers seeking temporary entry into this country for their employees and contract workers. Oftentimes, it can take months to obtain the necessary entry authorizations, thus seriously hampering a company's ability to perform the necessary work or internal training/orientation in a timely fashion. Situations such as these undermine the spirit and purpose of bilateral and multilateral trade agreements.

The Committee well understands that temporary entry provisions are not included in this

Agreement because of Congressional concerns that the negotiations of temporary entry provisions in the Chile and Singapore Agreements had not been explicitly authorized in advance. It would seem appropriate, therefore, that the responsible committees of Congress develop guidelines for future bilateral and multilateral trade agreements so that USTR has the flexibility to negotiate temporary entry provisions for highly skilled individuals, senior corporate executives, professional personnel (accountants, architects, educators, lawyers, health care personnel, as examples) and others with unique skills and experience, such as those who operate oil well drilling equipment or film camera operators. Not only will temporary entry provisions benefit U.S. service providers, they will also help increase the employment of Americans working overseas and, in many instances, will help create employment for U.S.-based workers who support those working abroad.

As the global marketplace becomes increasingly interdependent and as modern economies become more dependent on services for their growth and prosperity, the need for American service enterprises to move their people across national borders grows. Seconding staff to establish and operate an overseas branch, subsidiary or affiliate may be necessary, even on a short-term basis, as sufficient local qualified workers with the necessary skills, experience, and corporate knowledge are often not readily available.

At a minimum, a bilateral trade agreement should include, in the case of business visitors, a binding for access to the most common short-term business activities and a prohibition of prior approval procedures, petitions, labor certification tests or numerical limitations. For intra-company transferees, neither party to the agreement should be subject to employment tests, labor certification or numerical limits. Particular attention should be given to the temporary entry of professionals.

The absence of a movement of personnel provision in this Agreement is a serious shortcoming. While the absence of such a provision is not sufficient to withhold approval of this Agreement, ISAC 13 and USTR should be mindful of temporary entry provisions as future agreement are negotiated. ISAC 13 looks forward to working with USTR, other USG departments and other appropriate stakeholders to fashion commercially meaningful and politically feasible temporary entry/personnel movement proposals.

Transparency

The provisions of the Agreement providing for transparency taken together provide a high standard of transparency in administrative, licensing, and adjudicatory proceedings. In sum they are very valuable commitments that are consistent with current U.S. law and practice.

Transparency in regulatory processes is absolutely essential for services industries, because they generally are highly regulated. A government's regulations applying to financial services, energy services, or professional services, for example, can vitiate or nullify trade agreements that would otherwise provide full market access and national treatment.

The Agreement's transparency provisions are contained in four parts of the Agreement: The initial chapter on transparency applies to all trade under the Agreement. In the services chapter are additional provisions applying to all cross border services trade. The financial services chapter contains further provisions, as does the investment chapter.

The overarching provisions in the chapter on transparency contain the following essential elements: the designation of a contact point for inquiries, prompt publication; the requirement that "to the extent possible" measures that each Party proposes to adopt are published in advance, and that persons of both Parties have a reasonable opportunity to comment. Further the chapter provides that parties at interest to proceedings receive reasonable notice of such proceedings, and that they are allowed to present their case prior to final administrative actions. Each Party must establish independent tribunals or procedures for prompt review of administrative actions, and has the right to a decision based on evidence.

The transparency provisions set out in the financial services chapter are consistent with the other transparency provisions in the Agreement but are tailored to the needs of this sector.

In addition the Transparency Chapter commits each country to treat as criminal the acceptance or offerance of bribes to influence public decisions.

Dealer Protection Regimes

As in the recently concluded U.S.-Central American Free Trade Agreement, the Dominican Republic Agreement addresses restrictions on distribution in the Dominican Republic created through its dealer protection law. Dealer protection regimes place substantial burdens on the distribution of U.S. exports and services by locking U.S. companies into inefficient, exclusive and effectively permanent relationships, oftentimes regardless of the performance of the local dealer. The Agreement provides that dealer contracts entered into after the entry into force of the Agreement will be governed by general contract law principles, including the freedom to contract and the freedom to terminate contracts at the end of the contract period or renewal period. Future dealer contracts will only be subject to the dealer protection regime if the parties explicitly agreed to such a provision in the contract. The Agreement also includes important disciplines on the application of the dealer protection law to existing dealer contracts, including by providing that a contract may be terminated at the end of the contract period or renewal period without penalty, that damages calculated for the breach of such a contract may be no greater than under general contract law, that contracts are only exclusive if they explicitly require exclusivity and provisions promoting the use of neutral arbitration forums to resolve disputes. The Committee welcomes the innovative approach to dealer protection regimes adopted in this Agreement and believes that these provisions will substantially help promote more efficient and improved distribution for U.S. companies within the Dominican Republic.

B. Sectoral Issues. The Committee's opinions on specific service sectors follow.

Accounting Services

The large international accounting networks have been able to operate in the Dominican Republic in a reasonably satisfactory manner under contractual and other arrangements with local firms. The Agreement does not change the *status quo* for these organizations, which generally have the resources and volumes of business to justify and maintain these arrangements. However, the Dominican Republic has scheduled some serious barriers to smaller firms and single practitioners from the United States who may wish to offer their services there. Only Dominican nationals are permitted to practice as Certified Public Accountants, thus, preventing U.S. accountants from obtaining the Dominican qualification and providing statutory services in that market. In contrast, 52 of the 54 US licensing jurisdictions permit Dominican nationals to obtain a U.S. CPA qualification without reference to nationality, provided that they meet the education, examination and experience requirements. In addition, U.S. public accountants, auditors and book-keepers are not permitted to practice in the Dominican Republic except in association with Dominican nationals. In contrast, the United States maintains no such requirement for Dominican nationals who may wish to offer non-statutory services in the United States. These restrictions deprive small U.S. firms and single practitioners of the flexibility they require to enter and compete in the Dominican market, even though they may otherwise have the language skills, cultural affinity, professional knowledge and other abilities to be successful in that marketplace.

Advertising

Commercials produced in the Dominican Republic for local television broadcast or exhibition in cinemas are required to meet 75 percent local employment requirements. Commercials for Dominican goods and services which will be broadcast or exhibited in the Dominican Republic and are produced outside the country must meet a 25% local employment requirement. Since foreign-made commercials for imported U.S. goods and services are not covered by these restrictions, the negative trade affect of this measure is relatively small.

Architecture

The restrictions on the provisions of architectural services described in Annex 1 provide for equity and reciprocity in this sector. Although non-nationals of the Dominican Republic are authorized to provide architectural services only in a joint venture or in association with a nationally licensed architect, this provision still allows for acceptable market access and national treatment, while promoting professional capacity building and collaborative services.

Asset Management Services

The Agreement with the Dominican Republic advances market access goals in certain respects in a country that may be of commercial interest in the future. The Agreement includes a specific commitment, that the industry has sought in all recent trade agreements, to permit the cross-border provision of portfolio management services by asset managers of mutual funds. This commitment will allow a U.S. firm to achieve

economies of scale in serving its clients in the Dominican Republic. The commitment will be implemented through new legislation that the Dominican Republic has agreed to adopt no later than four years after entry into force of the Agreement. The industry is disappointed that the Dominican Republic has reserved the right to impose restrictions on acquisitions by foreign investors of certain government securities and securities of state enterprises and to require that financial institutions other than banks and insurance companies be organized as corporations.

Audiovisual Services

The Dominican Republic has provided meaningful commitments for market access for audiovisual services. The few non-conforming measures that the Dominican Republic has maintained in this sector do not represent significant restrictions on U.S. exports of filmed entertainment. The Dominican Republic's local content requirements for soap operas and music broadcast on radio, as well as their local domicile and incorporation requirements for broadcast television services, are limited in scope and do not significantly distort trade. Moreover, in a separate side letter, the Dominican Republic has pledged action against broadcast piracy, the single largest market access problem facing the filmed entertainment industry in that country. This side letter, which enters into force immediately upon signature of the Agreement, provides an important litmus test as to the willingness and ability of the Government of the Dominican Republic to meet its obligations under this Free Trade Agreement.

Computer and Related Services

The Agreement ensures full market access and national treatment for computer and related services by adopting a "negative list" approach and by taking no reservations in this important sector for the U.S. information technology industry. Between the Services Chapter and the Investment Chapter, the Agreement covers all modes of delivery, including electronic delivery, such as via the Internet. The negative list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The commitments for computer and related services are complemented by the commitments contained in the Electronic Commerce Chapter.

Education Services

The United States looks forward to education services in the Dominican Republic related to foreign language training, corporate business training, industrial training and the provision of educational consulting services. However, the potential for independent U.S. education services, and especially higher education, to be offered in the Dominican Republic are thwarted by the presence of an economic needs test by the Ministry of Higher Education, Science and Technology; the requirement that personnel reside in-country (appropriate only to physically based sites); and the lack of provision for temporary entry of education professionals.

Electronic Commerce

The U.S.-Dominican Republic Free Trade Agreement, as with other FTAs, includes important language on electronic commerce. The chapter maintains the high standards for trade in electronic commerce previously established under the Chile & Singapore FTAs. As with previous agreements, the U.S.-Dominican Republic FTA establishes the concept of "digital products"; prevents the application of customs duties on electronically delivered digital products; assures the non-discriminatory treatment of digital products; addresses the valuation of physically delivered digital products; and provides commitments to cooperate on electronic commerce policy. In addition, the Agreement includes special provisions on transparency, not seen in previous agreements.

The Agreement also recognizes the applicability of the WTO trade rules to electronic commerce.

The Agreement defines "digital products" consistent with earlier Agreements and reflecting the increasing development of digital products over the last two decades and the need for predictability in how digital products are treated in trade agreements. The parties agreed to non-discriminatory treatment of "digital products". It provides a broad national treatment and MFN non-discriminatory provision.

With respect to the physical delivery of digital products, the Dominican Republic agrees to apply customs duties on the basis of the value of the carrier medium. Presently many countries apply customs duties on content-based products using a wide variety of different standards, many of which are subjectively based on projected revenues from the sale of content-based products. U.S. industry has urged the USG to advance bilaterally, regionally and multilaterally a standard for customs valuation based on the value of the physical carrier medium for content-based products and therefore applauds the inclusion of this provision in the Agreement.

The parties also agreed to cooperate in numerous policy areas related to e-commerce.

Reservations: There are no e-commerce reservations. The Committee, however, does note the linkage between telecommunications and e-commerce, and comments that any barrier in telecommunications prevents important competition and growth that will foster trade in digital products in the affected markets.

Energy Services

The Agreement, particularly its investment and transparency provisions, provides a framework that can increase opportunities for U.S. energy services firms and facilitate the provision of energy services between the United States and the Dominican Republic.

The investment chapter includes a broad range of protections and guarantees that can enhance the attractiveness of the Dominican Republic as a destination for the many energy services providers who require a positive, secure and predictable investment climate. We do regret however, the Agreement's failure to protect existing investment agreements, among them those related to natural resources.

As noted earlier in this report, the Agreement does not include provisions to facilitate the temporary entry of expert, professional and managerial personnel. We regret this omission, since certain energy services providers rely heavily on the ability to move highly skilled workers from job site to job site with ease.

Engineering Services

U.S. engineers encounter no practical barriers to working in the Dominican Republic. The specific Annex I reference to engineering professional services will be equitable and reciprocal for both individuals and firms, provided no special barriers to membership in the local association appear later.

Express Delivery Services

The express delivery industry believes the Dominican Republic Agreement includes important provisions for the sector, including an appropriate definition of express delivery services (EDS). The Agreement recognizes express delivery services as a unique service sector and contains important commitments to maintain market access for the EDS industry.

The Agreement also includes important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers. And the Agreement includes significant language proscribing monopoly abuse by postal administrations when they compete in the supply of express delivery services. This provision should help limit unfair regulation and taxation of the express delivery services industry.

With respect to another key element for our industry - cross subsidization of express delivery services operations by postal authorities that use revenues and other privileges they derive from their government-granted monopoly rights to secure advantages in competitive express delivery operations - the Agreement states that the Dominican Republic has "no intention" of directing revenues to its postal monopoly to benefit express delivery services. We are concerned that this language creates no enforceable commitment and would not fully cover the scope of cross subsidization that could occur. Notwithstanding this shortcoming, the U.S. express delivery industry believes the text of the Agreement provides very substantial advantages.

Financial Services (other than insurance and asset management)

The market access commitments made by the Dominican Republic in the financial services sector (excluding insurance and asset management) in the proposed U.S. – Dominican Republic Free Trade Agreement are good. We are very pleased that, the Dominican Republic (unlike some considerably more developed economies with which the United States has negotiated free trade agreements this year) has not imposed limitations on the acquisition of domestic banks or securities firms by foreign firms, although we regret that the Dominican Republic has chosen to retain its capital dotation rules for bank branches. Industry is gratified that the Agreement's investment remedies have not been modified notwithstanding the existence of the Dominican Republic's domestic legal restrictions on short-term capital importation. Though we note in this

connection that continuing domestic legal requirements as to corporate form and local jurisdiction of incorporation as well as domestic law restrictions on corporate powers in the financial services sector diminish the Dominican Republic's attractiveness to foreign financial services firms. Finally, industry is very pleased that the Dominican Republic has agreed to the high level regulatory transparency provisions contained in the basic agreement.

Healthcare Services

The Dominican Republic Free Trade Agreement contains an unacceptable nonconforming measure that assesses a tax on earnings by health professionals under certain circumstances. It establishes a precedent that is unnecessary and unwarranted. Rather than removing barriers to trade, the Agreement imposes a new one on health professionals.

Regarding health professionals, this FTA is inferior to others reviewed to date. Specifically, the Dominican Republic will require that, "on departure, foreign health professionals must present a declaration before the Ministry of Health stating in detail the amounts, if any, charged to private patients." It then assesses a 10 percent tax to be paid on the amounts collected. This non-conforming measure sets health professionals apart from all other professionals, assesses a new tax on medical services provided for a fee, and will hinder American health professionals from establishing a referral base of patients with the means to pay.

We regret that U.S. negotiators, aware of the problems posed by this tax, were unable to secure its elimination.

On the positive side, the Agreement does allow for temporary licensing of health professionals. It also includes the standard language that extends reciprocity to medical professionals if Dominican health practitioners also gain recognition in the United States by the licensing agencies of one of our States. Similar provisions are found in other Free Trade Agreements, as are provisions that encourage the development of standards to allow for reciprocal licensing in the future.

Insurance

The insurance commitments are largely similar to those of the CAFTA countries. Wholly owned subsidiaries are permitted upon entry into force, and branching rights are provided within four years. A commitment on expedited availability of new insurance products ensures that while new products must be filed for review, decisions will be made within thirty days.

Legal Services

This committee is pleased that the Agreement does not impose any limitation or reservation that is specific to legal services. Thus, American lawyers should be free to provide legal assistance in any subject area in which they are competent.

The Agreement also lacks temporary-entry provisions. To date the absence of such

provisions does not appear to have inhibited delivery of legal services.

Telecommunications

The telecommunications chapter in the Dominican Republic Agreement is based on the CAFTA chapter. The chapter provides for access to and use of public telecommunications services. This language is a positive development because the DR's WTO commitments, while strong on regulatory principles, are weak on market access. Therefore, this WTO "Annex"-type language is a new and important commitment for the DR. The chapter includes positive "WTO-plus" commitments for all suppliers such as resale, number portability, and dialing parity. The standard major supplier section is included, with important obligations covering resale, provisioning of leased circuits and collocation. As in CAFTA, the cost-oriented interconnection obligation in this section is inappropriately carved out for mobile services. The chapter includes commitments to ensure independent regulatory bodies, and precludes regulatory bodies from holding a financial interest or maintaining an operating role in any supplier. The market access commitments are strong, and cover all-important services in the telecom sector.

The DR also included a side letter to this chapter that provides an overview of the DR's approach to regulation and its view that several key obligations in the chapter can be provided through market-based competition and commercial negotiation. Importantly, the letter also highlights that the DR will use appropriate regulatory measures when competition and commercial negotiations are not effective.

Vessel Repair

The ISAC welcomes the elimination of the 50 percent U.S. tariff on vessel repairs performed in the Dominican Republic. This Agreement will eliminate a significant burden on U.S. shipping companies that require repair work when servicing foreign markets.

VI. Membership of ISAC 13

A membership roster for the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13) is attached.

**Industry Sector Advisory Committee
For
Trade Policy Matters
Services (ISAC 13)
Member Roster**

Chairman

Mr. Robert Vastine
President
U.S. Coalition of Service Industries

Vice-Chairman

Ms. Elizabeth Benson
President
Energy Associates

Mr. Thomas Allegretti
President
American Waterways Operators

Ms. Emily Altman
Executive Director
Morgan Stanley

Fredric S. Berger, P.E.
Senior Vice President
The Louis Berger Group, Inc.

Mr. Stuart Brahs
Vice President, Federal Government Affairs
Principal Financial Group

Mr. Gordon Cloney
Chairman
Institute for International Insurance Development

Mr. Ken Crerar
President
The Council of Insurance Agents and Brokers

Ms. Ellen Delage
Director, International Relations
The American Institute of Architects

Mr. Donald Deline
Director, Government Affairs
Halliburton Company

Linda Menghetti Dempsey, Esq.
Vice President
Emergency Committee for American Trade

Paul Dickerson, Esq.
Haynes and Boone, LLP

Peter Ehrenhaft, Esq.
Member, Miller & Chevalier, Chartered
Representing the American Bar Association

Dr. Richard Feigel
Vice President Engineering
The Hartford Steam Boiler Inspection and Insurance Company

Mr. Peter Finnerty
President
American Ocean Enterprises, Inc.

Ms. Orit Frenkel
Senior Manager for International Trade and Investment
General Electric Company

Mr. Charles Heeter
Principal, International Government Relations
Deloitte and Touche LLP

Ms. Selina Jackson
Public Affairs Manager for International Trade
United Parcel Service

Mr. Leonard Karp
Executive Vice President and Chief Operating Officer
Philadelphia International Medicine

Ms. Laura Lane
Vice President, International Public Policy
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