

February 25, 2003

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

Honorable Ann M. Veneman
Secretary of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Ambassador Zoellick and Secretary Veneman:

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 Agricultural Technical Advisory Committee for trade in Grains, Feed, and Oilseeds on the Free Trade Agreement with Chile, reflecting a consensus advisory opinion on the proposed Agreement.

Sincerely,

A handwritten signature in black ink that reads "Donald E. Latham". The signature is written in a cursive, flowing style.

Donald E. Latham
Chair
Grains, Feed, and Oilseeds ATAC

The U.S.-Chile Free Trade Agreement (FTA)

Report of the
Agricultural Technical Advisory Committee for trade in Grains, Feed, and Oilseeds

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Agricultural Technical Advisory Committee for trade in Grains, Feed, and Oilseeds

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. – Chile 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 principle 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 ATAC for trade in Grains, Feed and Oilseeds hereby submits the following report.

II. Executive Summary of Committee Report

The overall assessment by this ATAC is that the agreement as it relates to grains, feed, and oilseeds appears equitable, provides reciprocity, and allows U.S. firms direct and transparent access to the Chilean market. The agreement is phased in over 12 years, providing U.S. firms the opportunity to adjust to competitive pressures. The Committee wholeheartedly endorses this particular agreement, though suggests some supplemental guidance, and recommends certain refinements in negotiating future such agreements.

The Committee notes that despite pressures to reach an agreement before the end of 2002, U.S. negotiators maintained the grain and oilseed industry's position that Chile's use of price bands must end, and they accomplished this goal. Both USTR and FAS staff should be applauded for working hard, keeping the industry apprised during negotiations and using private sector input to ultimately achieve an agreement that is beneficial to U.S. grains, feed and oilseeds.

III. Brief Description of the Mandate of the Grains, Feed and Oilseeds ATAC

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 the Grains, Feed and Oilseeds ATAC

This FTA negotiation was well underway when this committee was chartered, so a negotiating mandate from this committee was not put forward. But, based on the committee's consensus view that the overall outcome of the negotiations is favorable to the grains, feed and oilseeds sector, it can be viewed as meeting the committee's general objectives.

V. Advisory Committee Opinion on Agreement

Competition Policy

The agreement on Competition Policy allows the designation of monopolies but requires them to operate in a manner that minimizes or eliminates any nullification or impairment of benefits otherwise accorded under the agreement (Article 4 - Designated Monopolies). In this regard, the agreement goes a long way toward providing restrictions on trade distorting monopoly practices. This chapter should be a blueprint for how export state trading is restricted/disciplined in the FTAA as well as the WTO negotiations. The requirements that such monopolies justify pricing differences (see Article 6 - Differences in Pricing) on normal commercial considerations such as changes in supply and demand, to apply non-discriminatory treatment and to not engage in anti-competitive practices is an essential component for all free trade agreements. The provision sends a very clear message to Canada and its wheat marketing structure.

However, the requirement for release of information by monopolies (Article 7 – Transparency and Information Requests) could be strengthened in future agreements to reflect the level of transparency recommended in the U.S. WTO agriculture proposals on export STE's and on export credits. The STE language suggested by the U.S. for the Doha negotiations would require annual reporting of relevant information, including: initial and subsequent acquisition costs incurred and export prices of products exported or sold for export by such enterprises on a transaction-specific basis. Additionally, a member may request specific information concerning all operations relevant to the STE's export of agricultural products.

It should be noted that U.S. exporters are already required to provide information on the quantity of their sales transactions, the type and class of commodity, the marketing year of shipment, and the destination. They also report any changes in previously reported information, such as cancellations and changes in destinations. USDA requires full contract terms to be reported, which includes the date of the export sale, the name of the foreign buyer, delivery period and delivery terms. Although this individual sale information is reported by exporters in their reports

to USDA, it is kept confidential with USDA limiting its daily and weekly export reports to the public in a manner that protects commercial confidentiality.

Dispute Settlement

The dispute settlement provision replicates much of the process included in other trade agreements but requires that consultations begin within 15 days of a request in the case of perishable goods, which is half the time allowed under WTO dispute settlement. This should provide greater protection to U.S. producers of perishable agricultural products.

Sanitary and Phytosanitary Measures

The agreement's provisions on sanitary and phytosanitary measures dovetails the Uruguay Round's requirements but adds a bilateral committee intended to enable the two parties to better facilitate understanding and better manage disputes. The U.S. might have sought a specific reference in this section to new technologies like biotechnology and the importance of mutual recognition.

Technical Barriers to Trade

No comments

Safeguards

This section comes with an important three-year limitation on the imposition of safeguards during the transition period of the agreement. A party may only impose an agricultural safeguard measure during the implementation period for tariff elimination, and no agricultural safeguard may be imposed once it achieves duty-free status under the agreement. This reinforces continuing U.S. access to the market over time and ensures market access for those products that are duty free when the agreement is implemented. There is also a tariff snap-back provision available during the implementation period.

Chile retains protection for wheat flour, wheat starch, wheat gluten, brown rice, semi milled and fully milled rice and broken rice, and blanched rice by implementing a special safeguard provision that includes trigger prices.

These products represent the large majority of grain safeguards maintained by Chile. Safeguard duties may be imposed in amounts ranging from 30 to 100 percent of the difference between the specified trigger price and the import price. Some sense of historical averages would help to understand how much exposure exists to U.S. firms under the worst and best case scenarios.

The safeguard provisions also note that safeguard duties plus other duties must not exceed the lesser of the applied MFN rate or the MFN rate in effect the day preceding the implementation of the agreement.

The Committee offers a separate comment related to the pressures that result in safeguard actions. As evidenced by recent import protection actions by Mexico, the U.S. needs to ensure and potentially assist developing countries in carrying out commodity sector transitions to obviate the need for subsequent safeguard actions when finally encountering otherwise unfettered access by the United States.

Market Access

The U.S.-Chile Free Trade Agreement appears to allow U.S. grains, feed, and oilseeds equitable access to the Chilean market. Chile eliminates immediately its duties on prepared animal feeds and has a phased reduction in protection for most grains and oilseeds. Most grains and oilseeds entering Chile from the U.S. will move to a zero tariff immediately, while other generally processed forms are phased in over a four to 12 year period. Meanwhile, the United States eliminates most duties on grains, feeds, and oilseeds immediately. Feed products that are currently duty free will remain duty free when the agreement is implemented.

Equitable Treatment: Chile has agreed that if a lower customs duty is applied to wheat or wheat flour from other countries, then U.S. products would receive the lesser of the prevailing customs duty on MFA basis or the duty applied to any other imports under any preferential agreement. This provides U.S. wheat with continual and equal market access relative to all major wheat competitors.

This agreement not only removes all tariffs from durum and high protein wheat immediately upon signing, it also guarantees access at levels no less than or equal to, access granted in existing agreements or agreements that may be negotiated with competitors in the future. This approach should be included in all FTAs. For other wheat products the tariff levels are set at the GATT bound rate though it would have been preferable to tie it to the applied rate. However, the phase down period is acceptable and once again treatment is equal to or better than that of other countries.

Price Bands: The agreement's elimination of price bands and licensing schemes are a model for future FTAs and the ongoing FTAA. While the details are not clear on how the price band elimination will be structured, Chile has agreed to bring its price band mechanism into full compliance with its WTO obligations during the phase-out period. The commitment to eliminate the preferential treatment structure for domestic products is essential.

Export Taxes: The use of taxes on exports is prohibited unless the same tax is applied to the same goods when sold in the domestic market, which again reinforces U.S. access to the market.

Export Subsidies: Consultations are called for before export subsidies are used to counter the export subsidy of nonmember country. This provision would appear to limit the use of export subsidies, but does not preclude their use if an agreement cannot be reached between the United States and Chile on how to mitigate the impacts of the export subsidy.

Geographic Indicators: There is a mutual recognition of geographic indication (Article 15 – Distinctive Products) for U.S. bourbon whisky and certain Chilean wines. Although this may be characterized as a specification under Article 23 of the TRIPS Agreement, it should be emphasized that it does not endorse an expansion of the concept as currently being pursued by the EU in the Doha Development Agenda.

General Notes: Reference to Annex I, Item 9 - The agreement contains extensive provisions on both sides covering trade in sugar, blended syrups and sugar containing products that may affect the demand for grain for processing in the U.S. and export markets. We suggest the establishment of clear definitions on the data to be used to determine the "trade surplus" status of

the two partners. Specifically, the calculation should be sufficiently detailed so as to avoid any possibility for future ambiguity, and consequently the potential for trade disputes. Additionally, the two parties should agree upon a fixed annual date for making a trade surplus determination. Both of these clarifications could be accomplished through an exchange of letters among the two governments. The disagreements between the U.S. and Mexico over calculation of a net consumption surplus for sugar under the NAFTA is a lesson on the need to clearly spell out such definitions in trade agreements.

VI. Grain, Feed and Oilseed ATAC Membership

Name	Organization	City/State
Mr. Donald Latham (Chairman)	Latham Seed Company	Alexander, IA
Dr. Philip Abbott	Purdue University	West Lafayette, IN
Mr. Daniel G. Amstutz	Amstutz & Company	Arlington, VA
Mr. Dale Artho	National Grain Sorghum Producers	Wildorado, TX
Mr. William Barrett		Lexington, NE
Mr. Gary Blumenthal	World Perspectives, Inc.	Washington, D.C.
Mr. Kyd Brenner	DTB Associates, LLP	Washington, D.C.
Mr. Carl Brothers	Riceland Foods, Inc.	Stuttgart, AK
Mr. Tom Buis	National Farmers Union	Washington, D.C.
Mr. Robert Carlson	North Dakota Farmers Union	Jamestown, ND
Mr. Robert E. Cummings, Jr.	USA Rice Federation	Arlington, VA
Mr. Steve Daugherty	Pioneer Hi-Bred International, Inc.	Des Moines, IA
Mr. Dennis R. DeLaughter	U.S. Rice Producers Association	Edna, TX
Ms. Jenifer Felzien	Women Involved in Farm Economics	Sterling, CO
Mr. Neal Fisher	North Dakota Wheat Commission	Bismark, ND
Mr. Dwain Ford	American Soybean Association	Kinmundy, IL
Mr. John Gordley	Gordley Associates, Inc.	Washington, D.C.
Mr. Paul B. Green	North American Millers' Association	Washington, D.C.
Mr. John Hansen	Nebraska Farmers Union	Lincoln, NE
Mr. Kenneth Hobbie	U.S. Grains Council	Washington, D.C.
Mr. Mark Hodges	Oklahoma Wheat Commission	Oklahoma City, OK
Mr. Herbert Karst	Montana Grain Growers Association	Sunburst, MT
Mr. Alan Kemper	Indiana Soybean Growers Association	Lafayette, IN
Mr. Larry Kleingartner	National Sunflower Association	Bismarck, ND
Mr. Charles Kruse	Missouri Farm Bureau	Jefferson City, MO
Mr. Tim Lust	National Grain Sorghum Producers	Lubbock, TX
Mr. Tim D. McGreevy	USA Dry Pea & Lentil Council	Moscow, ID

Dr. Owen J. Newlin	Agronomic Science Foundation	Des Moines, IA
Mr. George Obernagel	West Pointe Bank & Trust Company	Belleville, IL
Ms. Amy L. Philpott	National Dry Bean Council	McLean, VA
Mr. John Reed, Jr.	Archer Daniels Midland Company	Decatur, IL
Mr. Robert Reeves	Institute of Shortening and Edible Oils	Washington, D.C.
Ms. Candace A. Roper	CoBank	Englewood, CO
Dr. C. Parr Rosson III	Texas A&M University	College Station, TX
Mr. Michael Rue	Farming Enterprise	Marysville, CA
Mr. Robert Rynning	National Barley Growers Association	Kennedy, MN
Mr. Ladd Seaberg	MGP Ingredients, Inc.	Atchison, KS
Mr. Christopher Shaffer	S. Lightning Farms	Walla Walla, WA
Ms. Barbara P. Spangler	Wheat Export Trade Education Committee	Washington, D.C.
Ms. Tamara A. White	Illinois Farm Bureau	Bloomington, IL
Mr. David Winkles	South Carolina Farm Bureau	Columbia, SC