



FANWOOD CHEMICAL, INC.

219 MARTINE AVENUE, NORTH • P.O. BOX 159 • FANWOOD, NEW JERSEY 07023-0159
(908) 322-8440 • FAX (908) 322-8494 • e-mail: info@fanwoodchemical.com

September 20, 2006

Ambassador Susan C. Schwab
United States Trade Representative
Executive Office of the President
600 17th Street, NW
Washington DC 20508

Dear Ambassador Schwab:

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 United States Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3) on the Trade Promotion Agreement between the United States and Colombia.

Very truly yours,

V.M. (Jim) DeLisi, Chairman
ITAC 3

VMJD: me

The United States – Colombia Trade Promotion Agreement

Report of the
United States Industry Trade Advisory Committee for Chemicals, Pharmaceuticals,
Health/Science Products and Services [ITAC-3]
September 20, 2006

September 20, 2006

United States Industry Trade Advisory Committee for Chemicals, Pharmaceuticals,
Health/Science Products and Services [ITAC-3]

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

1. 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 United States Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health/Science Products and Services hereby submits the following report.

2. Executive Summary of Committee Report

We believe that the negotiating objectives and priorities of ITAC-3 regarding the United States - Colombia TPA have substantially been met. We are very pleased with the rules of origin that were included in this agreement. We are also pleased that all tariff lines eventually go to zero but are disappointed in the number of lines in our sector that are the subject of extended staging. All but one of our members are concerned that the subject of biodiversity was introduced in this agreement because we do not believe that a TPA is the appropriate vehicle for this issue.

III. Brief Description of the Mandate of ITAC-3

ITAC – 3, the United States Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health/Science Products and Services, in addition to counting a representative of the environmental community amongst its members, represents the following product sectors and subsectors:

Adhesives and Sealants
Specialty Chemicals
Industrial Chemicals
Organic Chemicals
Inorganic Chemicals
Crop Protection Chemicals
Pharmaceuticals
Biotechnology
Dyes and Pigments
Paints and Coatings
Petrochemicals
Fertilizers
Printing Inks
Electronic Chemicals

Rubber and Rubber Articles
Soaps and Detergents
Plastics and Compounded Products
Composite Materials
Biocides
Forest and Paper Product Chemicals
Rare Earth Metals
Radioactive Chemicals
Enzymes, Vitamins, and Hormones
Cosmetics, Toiletries, and Fragrances
Photographic Chemicals and Film
Catalysts
Animal Health Products
Medical Devices & Equipment

The sector coverage as listed above for ITAC 3, includes the products and substances classified in the U.S. Harmonized Tariff Schedule (HTS) Chapters 28 – 40, as well as other specific chemicals found in HTS Chapters 13, 14, 15, 22, 23, 25, 27, 55 and 71 as well as medical equipment found in HTS Chapters [28](#), 30, 34, [38](#), 40, 42, 61, 63, [84](#), [85](#), [87](#), [90](#) and [94](#).

Deleted: _____

IV. Negotiating Objectives and Priorities of ITAC-3

ITAC-3 emphasized the following points prior to, and during the negotiations.

Importance

From the perspective of our industrial sectors, Colombia is not a significant trading partner with the United States. We continue to urge the Administration to devote its energies to negotiating FTA's with strategic trading partners, such as South Korea. However, we want to reemphasize the twin priorities of implementation and enforcement of this and other free trade agreements.

Chemical Tariff Harmonization Agreement

ITAC-3, and its predecessor, the Industry Sector Advisory Committee for Chemicals and Allied Products [ISAC-3], has long supported the Chemical Tariff Harmonization Agreement (CTHA) initiated in the Uruguay Trade Round. Accordingly, we particularly favor increased trade relationships with current CTHA signatory countries as well as other nations that have chemical producing industries.

Over the long term, the U.S. chemical sector generally favors, with appropriate staging, a multilateral agreement on the elimination of chemical tariffs by the world's chemical producing nations. The pharmaceuticals sector supports immediate tariff elimination in accordance with the multilateral understanding on elimination of pharmaceutical tariffs. The negotiation by the current Administration of TPAs with key chemical producing countries can provide the catalyst to bring the tariff elimination objective into focus in the current round of multilateral negotiations under the auspices of the World Trade Organization. Until the Doha Development Agenda is successfully concluded, we support continuing efforts to achieve the elimination of chemical tariffs through selective bi-lateral and regional TPAs, and as part of countries' accessions to the WTO, as desirable alternatives, so long as they do not undercut efforts to achieve the ultimate goal of a level trading field and broad multilateral tariff elimination.

Staging of Market Access Provisions

ITAC-3 favors realistic and balanced staging timetables in all TPAs for the elimination of tariffs and non-tariff barriers. ITAC-3 also favors immediate tariff elimination for the pharmaceutical sector in all TPAs in accordance with the multilateral consensus contained in the Understanding on Elimination of Pharmaceutical Tariffs.

Rules of Origin

The rules of origin for chemicals under free trade agreements are a vitally important aspect for the chemicals sector.

We have proposed that the rules of origin in free trade agreements for chemical products (Harmonized Tariff Schedule Chapters 28-40) be based on the position taken by the United States in its submission to the World Customs Organization's Committee on Rules of Origin. These rules are hierarchical in nature, starting first with the concept of "tariff shift" as the test for determining whether there has been a substantial transformation of a product that will confer origin. Where a product, good, or substance does not meet the tariff shift rule, the second test should be the chemical reaction rule. If, following these two tests, the product's origin is still in doubt, a third set of tests based on additional rules for mixtures, purification, separation, and so forth.

ITAC-3 is not in favor of a "value content" rule of origin. We find these rules of origin to be burdensome and inefficient.

ITAC-3 strongly supports harmonizing rules of origin in as many trade agreements as possible.

Investment

The industry members of ITAC-3 believe that the inclusion of a chapter in any free trade

agreement providing for strong investment protection rules for U.S. companies is a priority.

Among the elements that we advocate that should be covered in an investment chapter are:

- The defining of investment in a comprehensive manner;
- The guarantee of the better of either MFN or national treatment;
- The provision for and the assurance of the free transfer of profits and capital;
- The adequate dealing with issues affecting the movement of key personnel;
- The disciplining of the use of performance requirements;
- The prohibition of expropriation except in the case of a public purpose and only with the payment of prompt, adequate and effective compensation;
- The guarantee that investment will receive fair and equitable treatment, with full protection and security, consistent with the principles of international law; and
- The assurance that investors have access to an effective mechanism in the agreement for the settlement of investor-state disputes within the provisions of the FTA that are consistent with the “Model BIT”, NAFTA, Chile, and Singapore.

Mr. Waskow, of Friends of the Earth, has urged that the mandate in the Trade Act of 2002, requiring that foreign investors should receive no greater substantive rights than U.S. citizens are accorded under U.S. law, should be complied with. He further advocates that environmental and other public interest protections be fully protected in the text of the Agreement and that foreign investors should not be permitted to bypass the domestic judicial systems of the parties to any free trade agreement.

Labor and Environment Provisions

ITAC-3 has advocated that U.S. negotiators should consider with great care the pursuit of these objectives. The importance of labor and environment, and other issues such as human rights, must not be denied by any industry sector. However, all of the industry sector members of ITAC-3 believe that the complex and global issues of labor and environment are best dealt with in the international institutions that already exist to examine these issues—in the case of labor, the International Labor Organization, and, for the environment, the various multilateral environmental agreements (MEAs) and the WTO Committee on Trade and Environment, which seeks to determine how trade agreements and environmental agreements should interact. Approaching these issues in a piecemeal fashion through bilateral free trade agreements is, in the judgment of the industry sector ITAC-3 members, inadvisable.

The industry members of ITAC-3 also indicated that it is a fundamentally misguided strategy to include labor and environmental provisions in future trade agreements in such a way as to lead to the imposition of trade sanctions. If we were to pursue this formula, those members felt that the U.S. would ultimately be choosing a market closing, not a market-opening strategy. Important

trading partners would turn away from this strategy, and U.S. efforts to create more open markets would fail. The industry members have urged that the chemical and pharmaceutical industries, and their respective trade associations, get more actively involved in numerous discussions with interested parties about the relationship that should exist between trade and the environment. They believe that dialogues of this nature are the best means of providing the basis for exploring constructive approaches on a multilateral level.

V. Advisory Committee Opinion on Agreement

ITAC-3 supports the approval of this Agreement. We would appreciate your special attention to our particular areas of concern, most notably inclusion of the subject of biodiversity and the extended staging of tariff elimination, where this Agreement may serve as a template for future TPAs.

The following specific comments are inserted in accordance with the numeration and titles in the Agreement text:

Chapter 1: Initial Provisions and General Definitions

No comment.

Chapter 2: National Treatment and Market Access for Goods

We are pleased that all tariff lines eventually go to zero. We wish that the USTR had been able to close a tariff deal closer to that which it negotiated with Australia where almost all tariff lines were reduced to zero upon implementation of that agreement. We are disappointed in the number of lines in our sector that are the subject of extended staging, but recognize the struggle that the USTR faced in this area and therefore accept what has been done.

Chapter 3: Textiles & Apparel

No comment

Chapter 4: Rules of Origin Procedures

We are very pleased with the rules of origin that are included in this agreement. ITAC-3 worked very closely with Mr. Jay Eizenstat of the Office of the USTR to obtain rules for our sector that ensure that chemical products subject to, and taking advantage of, this agreement are truly territorial to the parties to it, namely the US and Colombia. We applaud Mr. Eizenstat for a job well done!

It is our hope that the chemical rules of origin contained in the Colombia TPA are

followed in future TPAs and not those unfortunately found in the agreements with Jordan, Morocco, Israel and Bahrain, which all contain a GSP-based rule. We continue to urge the USTR to work to secure more practical rules in ongoing free trade negotiations in other parts of the world.

We are aware that the United States intends to seek a Free Trade Area for the entire Middle East Region [MEFTA]. We support this concept but strongly urge that the language on rules of origin employed with Israel, Jordan, Morocco, and now Bahrain, not be used as a template for any future negotiations.

Chapter 5: Customs Administration and Trade Facilitation

No Comment

Chapter 6: Sanitary and Phytosanitary Measures

No Comment

Chapter 7: Technical Barriers to Trade

No Comment

Chapter 8 Trade Remedies

No Comment

Chapter 9 Government Procurement

No Comment

Chapter 10: Investment

No Comment

Chapter 11: Cross-Border Trade in Services

No Comment

Chapter 12: Financial Services

No Comment

Chapter 13: Competition Policy

No Comment

Chapter 14: Telecommunications

No Comment

Chapter 15: Electronic Commerce:

No Comment

Chapter 16: Intellectual Property Rights:

It is ITAC 3's understanding that the side letter between the United States and Colombia confirms that parties have flexibilities in implementing Article 16.10.3 such that the Colombian system may be in full compliance with the FTA, but may be distinctly different in design from that of the U.S. Nonetheless, it is ITAC-3's understanding that the goal of Article 16.10.3 (a) and (b) as stated in the side letter, is to prevent approval of a pharmaceutical product to enter the market during the term of a patent.

Chapter 17: Labor:

No comment

Chapter 18: Environment:

While we are committed to promoting and encouraging the conservation and sustainable use of biological diversity, we believe that an TPA is not the appropriate place for discussion or commitments on this important subject. Mr. Waskow of Friends of the Earth, and a member of ITAC-3, feels that inclusion is appropriate and warranted.

Chapter 19: Transparency:

No Comment

Chapter 20: Administration of Agreement and Trade Capacity Building:

No Comment

Chapter 21: Dispute Settlement:

No Comment

Chapter 22: Exceptions:

No Comment

Chapter 23: Final Provisions:

No Comment

Annexes:

No Comments

Other Documents:

No Comments

VI. Membership of Committee

V.M. (Jim) DeLisi, Chairman
President
Fanwood Chemical, Inc.

Robert E. Branand, Vice Chairman
Representative
National Paint & Coating Association

Dr. W. Martin Struass
V.P. Consumer Traits & Food Policy
Monsanto Company

Shawn M. Brown, Esq.
Director or Policy
Generic Pharmaceutical Association

Michelle A. DeMoor, Esq.
Director, Global Strategy & Analysis
AdvaMed

P. Claude Burkey
Divisional V.P. Global Government Affairs
Abbott Laboratories

Donald E. Ellison
Representative
SACMA

Morris A. Chafetz
President
Hemisphere Polymer & Chemical

D. Geoffrey B. Gamble, Esq.
Director of International Government Affairs
E.I. DuPont de Nemours & Company

Mildred W. Haynes
Manager, Federal Government Relations
3M

Lloyd N. Moon
Vice President
Chemtura Corporation

Craig S. Kramer
V.P. International Government Affairs
Johnson & Johnson

Tracey J Norberg
V.P. Environment & Resource Recovery

Nancy R. Lenenson
Director, US Federal Government Relations

Rubber Manufacturers Association

Rosemary L. O'Brien
V.P. Public Affairs
CF Industries

John C. O'Connor
Senior Customs Associate
Eli Lilly and Company

Jorge P. San Pedro
Director, International Trade Relations
Eastman Chemical Company

J. Lawrence Robinson
President
Color Pigment Manufacturers Association

Dr. George L. Rolofson
Representative
Gowan Company

Dr. Isi A. Siddiqui
V.P. Science & Regulatory Affairs
CropLife America

Arthur J. Simonetti
Director, Trade Legislation & Regulation
Honeywell International

Henry P. Stoebenau
Representative
American Association of Exporters & Importers

David F. Waskow, Esq.
International Program Director
Friends of the Earth

S.C. Johnson & Son, Inc.

Matthew T. McGrath, Esq.
Representative
Intermune, Inc.

Gerald R. Prout
V.P. Government & Public Affairs
FMC Corporation

Geralyn S. Ritter, Esq.
V.P. International Affairs
PhRMA

Lisa M. Schroeter
Director, International Policy
The Dow Chemical Company

Marjory E. Searing
V.P. Public Affairs
Pfizer Inc.

Albert C. Sutphin
President
Braden Sutphin Ink Company

Karen B. Toliver, Esq.
V.P. International Affairs & Trade Counsel
The Society of the Plastics Industry, Inc.

Aracelia Vila
Representative
Schering-Plough Pharmaceuticals

Ford B. West
President
The Fertilizer Institute