

U.S. – Chile Free Trade Agreement

Report of the
Industry Sector Advisory Committee on Electronics and Instrumentation for
Trade Policy Matters (ISAC 5)

February 27, 2003

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Report by the Industry Sector Advisory Committee on Electronics and Instrumentation for Trade Policy Matters (ISAC 5) to the President on the U.S.-Chile Free Trade Agreement (FTA)

I. Purpose of the Committee Report

Section 2104(e) of the Trade Act of 2002 requires that advisory committees provide the President, the United States 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 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 Industry Sector Advisory Committee on Electronics and Instrumentation for Trade Policy Matters (ISAC 5) hereby submits the following report.

II. Executive Summary of ISAC 5 Report

ISAC 5 has commented in Section V. on those chapters for which it is competent to do so. On the whole, ISAC 5 applauds the provisions of this agreement and its ability to satisfy many of our ISAC's overall trade negotiating objectives. We believe the improved market access and customs procedures, along with brand new disciplines in areas such as E-Commerce, make this agreement of substantive benefit to the industries covered by our committee and that it would serve the U.S. national economic interest for this agreement to be approved by the U.S. Congress as soon as possible.

Our committee's review of this agreement leads us to also recommend that certain changes be considered with respect to the advisory committee process for reviewing proposed trade agreements. First, trade agreements have become lengthy, complex legal agreements that are increasingly difficult to analyze without assistance. We recommend that the U.S. negotiating team provide to all advisory committees, either individually or in one large meeting, a detailed review of each chapter of the agreement, including a summary of issues that were resolved as well as those that remain unresolved at the conclusion of the negotiation. Such a review was graciously provided to our committee, and it was immensely beneficial in helping our committee perform its review function.

Second, we recommend that such briefings include a summary of how each chapter of the new agreement differs in substance from the text of similar chapters in any prior trade agreement.

Third, we recommend that more detailed briefings be provided to the advisory committees on the development of the texts during the conduct of a trade negotiation.

Finally, we recommend that the advisory committee review period be amended to permit at least 90 days for review rather than 30 days.

III. Brief Description of the Mandate of ISAC 5

The Industry Sector Advisory Committee on Electronics and Instrumentation for Trade Policy Matters (the Committee) was established on March 21, 1980, and extended by the Secretary of Commerce (the Secretary) and the United States Trade Representative (USTR) pursuant to the authority delegated under Executive Order 11846 of March 27, 1975, as an advisory committee established under Subsection 135(c)(2) of the Trade Act of 1974.

The Committee consists of eight members from the electronic and instrumentation industry sectors. The membership of the Committee has been extended to consider inclusion of representatives from the software and safety and security industries. Members of the Committee are selected to carry out best the objectives of the Committee.

The members, all of whom come from the private sector, serve in a representative capacity presenting the views and interests of a U.S. business in the electronics and instrumentation industry sectors; they are, therefore, not Special Government Employees.

The Committee performs such functions and duties and prepare reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to the sector and functional advisory committees.

The Committee advises the Secretary and the 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 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 thereunder.

In particular, the Committee provides detailed policy and technical advice, information, and recommendations to the Secretary 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 products of its 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 ISAC 5

ISAC 5 developed the set of negotiating objectives below to guide U.S. negotiators in all current trade negotiating forums. We understand that not all of these objectives applied to the negotiation of the FTA with Chile.

TRADE BARRIERS AND DISTORTIONS

1. Seek the elimination of tariffs on all information technology products, infrastructure equipment, scientific instruments, and medical equipment.
2. Seek industry sector zero-for-zero agreements in which nations would agree to eliminate tariffs on goods in industrial sectors where consensus is reached.
3. Seek increased transparency in customs procedures, full implementation of the WTO Customs Valuation Agreement, and additional signatories to the 1984 software valuation decision.
4. Enforce and promote the agreement on Technical Barriers to Trade, and ensure that standards, conformity assessment, and technical regulations are not used as obstacles to timely, cost-effective trade in information technology and communications products.
5. Encourage better regulatory practices, including:
 - increased opportunities for meaningful stakeholder participation;
 - access to draft regulatory proposals;
 - justification that proposed regulations are based on sound science, cost-benefit - analysis, risk assessment or other objective evidence; and
 - clear lines of political accountability within governments for all implemented regulations.
6. Encourage global access to medical technology through:
 - greater acceptance of international standards, certifications and approvals;
 - increased transparency in local medical technology approval and reimbursement listing processes; and
 - reasonable timeframes for decision making, consultations with the affected parties, and appeals mechanisms.

TRADE IN SERVICES

7. Seek market access and national treatment for all services that can be delivered via e-commerce.
8. Seek full market access and national treatment commitments for services sectors essential to supporting e-commerce transactions, including telecommunications, computer, advertising, financial, distribution, and express delivery services.
9. Expand and deepen basic and value added telecommunications commitments, sign onto the Reference Paper and improve its implementation, as well as strengthen telecommunications obligations to ensure competitive,

- nondiscriminatory access to public telecommunication networks and services for Internet service providers and other value added service providers. Additionally, prevent anti-competitive behavior by major suppliers, including government owned or controlled service suppliers, particularly when acting in competition with privately owned service suppliers in the provision of telecommunications services.
10. Oppose attempts to apply basic telecommunications regulations to value-added, ISP, and other internet-related services.

FOREIGN INVESTMENT

11. Seek further reduction of trade distorting barriers to foreign investment, including full compliance with the WTO's Agreement on Trade-Related Investment Measures, clarification of the TRIMs Agreement to explicitly prohibit forced technology transfers, and no foreign investment limitations under the market access and national treatment commitments of the WTO Agreement on Trade in Services.

INTELLECTUAL PROPERTY

12. Seek full implementation of existing TRIPs commitments and encourage ratification of WIPO Copyright Treaties.

TRANSPARENCY

13. Seek improvement in the transparency and management of the WTO, including increased transparency in procedures.

ELECTRONIC COMMERCE

14. Ensure that current WTO obligations, rules, disciplines and commitments, namely the GATT, GATS and TRIPS agreements, apply to e-commerce.
15. Ensure that electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and that their classification ensures the most liberal treatment possible.
16. Ensure that governments refrain from enacting trade-related measures that impede e-commerce.
17. Where legitimate policy objectives require domestic regulations that affect e-commerce, obtain commitments that any such regulations are least trade restrictive, nondiscriminatory, transparent, and promote an open market environment, including regulations dealing with content.
18. Extend the WTO moratorium on duties on electronic transmissions.

GOVERNMENT PROCUREMENT

19. Seek to expand the membership of the WTO Agreement on Government Procurement; seek conclusion of a WTO Agreement on Transparency in Government Procurement; and promote global use of electronic publication of procurement information, including notices of procurement opportunities.

LEVIES

20. The rapid proliferation of levies on high-tech products around the world is an emerging trade barrier that has the potential to severely impact America's high technology manufacturers. In countries where they are imposed, levies are indiscriminately imposed on all technologies sold for private or commercial use even though over 85 % of technology products are sold to businesses or government. Levies jeopardize the joint efforts by content providers and technology companies to develop new, flexible means for consumers to access digital content while providing adequate protection for rights holders such as digital rights management (DRM) technologies. Given these circumstances we seek inclusion of an obligation that prohibits the application of levies to digital products in future U.S. trade agreements.

V. ISAC 5 Opinion on Agreement

ISAC 5 has opinions on the US-Chile FTA chapters below. The ISAC has no opinion on chapters not listed.

E-Commerce: We believe these provisions meet our objectives, but defer final judgment to the more expert advice of IFAC 4.

Government Procurement: These provisions provide the strong principles and comprehensive coverage sought by the ISAC.

Customs Procedures: The ISAC is pleased at the inclusion in the agreement of measures which harmonize and facilitate these procedures. As the leading U.S. exporting sector, the U.S. high-tech industry absorbs large additional costs globally due to inefficient customs procedures.

Rules of Origin: It is impossible for the ISAC to definitively comment on these; instead, meaningful comment requires that the agreement be made public so that scores of companies can examine the proposed rule of origin for their products.

Technical Barriers to Trade: The text of the agreement meets our committee's requirements.

Telecommunications: The text improves access to basic telecommunications networks and includes worthy provisions on licensing and transparency.

Temporary Entry: We approve of the improvements achieved which should facilitate business/professionals travel.

Services: We applaud the agreement's use of a negative list, which provides much greater liberalization and access in services areas, such as telecommunications, which are of interest to our committee. We defer to the Services ISAC for more expert comment on specific provisions.

Investment: The negative list approach taken will protect the ability of our companies to invest with few restrictions.

Intellectual Property: In general, our committee is pleased with the provisions in the agreement. However, we are unable to comment on an issue which was still unsettled at the time of our committee review that deals with exceptions to copyright laws for temporary copies of digital goods.

Market Access: We are very pleased with the immediate elimination of duties by Chile for all products covered by ISAC 5. We are disappointed that Chile did not also agree to become a signatory to the WTO Information Technology Agreement, but appreciate the efforts made by U.S. negotiators to obtain such agreement while also negotiating the FTA. We are confused as to why there is a medical products annex attached to the U.S.-Singapore FTA. If the reason is related to work which has been done within APEC on medical products, we believe such an annex could have also been included in an agreement with Chile, which is also an APEC member.

VI. **Membership of ISAC 5**

Chairman

Mr. B. Timothy Bennett
Senior Vice President, International
American Electronics Association

Ms. Marian Barell Nelson
Director, Global Trade Policy
Motorola, Inc.

Mr. Arun Bhumitra
Chief Executive Officer
Arjay Telecommunications

Mr. Robert Britain
Vice President, Medical Products
National Electrical Manufacturers Association

Ms. B. Anne Craib
Director, International Trade and Government Affairs
Semiconductor Industry Association

Mr. F. Edward Jones
Product Manager
Kemet Electronics Association

Mr. Kenneth Klein
Director International External Affairs
Xerox Corporation

Mr. R. Wayne Sayer
Representing Applied Materials, Inc.