March 12, 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.-Australia Free Trade Agreement reflecting consensus on the proposed Agreement.

Sincerely,

Robert Vastine
Chairman, ISAC 13

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

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.-Australia 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 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 Chapters of the Agreement that are of interest to ISAC 13 are Chapter 10 on Cross-Border Trade in Services, Chapter 11 on Investment, Chapter 12 on Telecommunications, Chapter 13 on Financial Services, Chapter 16 on Electronic Commerce and Chapter 20 on Transparency.

The provisions of Chapter 10, which liberalize the provision of services on a cross-border basis, significantly advance the market access goals of US services industries with a major trading partner. Australia has provided commitments above those made in the GATS, including certain advertising services, filmed entertainment services, packaging services, printing and publishing services, video tape rental and leasing services; medical and hospital services, data base services, R&D services on natural sciences, technical testing and analysis, TV and radio broadcast transmission services, cable and satellite transmissions services, live entertainment services, news agency services, commercially provided library, archive, museum or other cultural services, rail transport. The financial services chapter includes important cross border commitments in mutual fund portfolio management and in insurance with respect to reinsurance, marine aviation and transport, and intermediation. Because of the "negative list" approach to sector coverage, the agreement also secures access for all new services, ensuring the relevance of this

agreement into the future.

The Chapter on Investment 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 chapter provides significant new opportunities for market access for investment and includes many high standard protections for such investment. However, the chapter omits key investment protections sought by this Committee most notably an investor-state dispute settlement mechanism, which greatly limits the enforceability of the investment protections negotiated. It also omits any protections for investment agreements particularly important to sectors involved in agreements with government agencies in the energy, communications, infrastructure and other sectors. The annexes to the chapter limit significantly the application of Australia's investment screening mechanism, but leave in place Australia's ability to screen large US acquisitions of and portfolio investments in Australian companies. The Committee is very disappointed by the failure of the investment provisions of this Agreement to achieve the high level of investment access and protections achieved in prior Free Trade Agreements and Bilateral Investment Treaties.

Unlike recent bilateral trade agreements, the U.S.-Australia Free Trade Agreement does not include a provision for the temporary entry of key businesspersons. ISAC 13 is disappointed by the absence of such an important provision.

The Chapter on Transparency, and related provisions on transparency in the Services and Financial Services Chapters, create a network of obligations to improved regulatory transparency that are highly important particularly for highly regulated services industries.

Provisions of the Telecommunications, Financial Services, and Electronic Commerce Chapters are discussed below.

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 more U.S. employment.

US 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. foreign direct investment, 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, performance requirements, investment agreements and investor-state dispute settlement.

Finally, ISAC 13 appreciates the decision of the U.S. Government to pursue a *negative list* (or "top-down") approach in this agreement and hopes it will continue to be used.

V. Advisory Committee Opinion on Agreement

Overall, the Committee believes that the U.S.-Australia FTA meets the Committee's objective of achieving new and expanded trading opportunities.

A. Crosscutting Provisions. The Committee's opinions on investment, temporary entry, and transparency follow:

Investment

The investment chapter and annexes in this Agreement incorporate many of the key

provisions sought by this Committee with respect to access for U.S. investment and the protection of such investment. Such provisions are of particular interest to service providers, delivery of whose services often requires a local presence. The Agreement departs, however, in several significant respects from the negotiating objectives laid out by the U.S. Congress in the Trade Promotion Authority Act, enacted as part of the Trade Act of 2002, and this Committee's own objectives.

The Agreement makes substantial progress in reducing the barriers to U.S. investment. Overall, the Agreement assures U.S. investors greater opportunities to establish, acquire and operate investments in Australia in all sectors, except where Australia has taken reservations, as discussed below on a sectoral basis. The Agreement also makes progress at reducing, but does not eliminate, the barriers to investment created by Australia's investment screening mechanism (the 1975 Foreign Acquisitions and Takeover Act), which this Committee had recommended eliminating or substantially modifying on several occasions. The screening mechanism allows Australia to review and potentially restrict foreign investments based on a national interest test.

The Agreement generally exempts greenfield investments from coverage, thus limiting Australia's investment screening to acquisitions of Australian businesses with total assets of $A800 million or more, although Australia will continue to be able to screen investments: (1) in existing Australian businesses with total assets of $A50 million or more in the following areas: transportation, telecommunications, defense, encryption, security and communications, uranium or plutonium extraction or the operation of nuclear facilities; or (2) that would lead to "unacceptable shareholding or to practical control" of Australian financial sector companies. Side letters were negotiated to provide a more fair and open screening process overall and to ensure that Australia's screening of an investment in the financial sector will be assessed with respect to the entire sector, not just a sub-sector (such as banking or insurance).

The ISAC recognizes the strong efforts made to limit Australia's screening mechanism, but is disappointed that it was not fully eliminated and that significant screening continues to be permitted. This seems inappropriate in an OECD member with a highly developed economy. The fact that the practice is allowed to persist in Australia may make it harder to remove in much less advanced economies.

The investment chapter also contains many of the key investment protections sought by the Committee, including a broad definition of investment and protections related to fair and equitable treatment, the free transfer of capital, no performance requirements, compensation for expropriation, as well as non-discrimination. Nevertheless, the Agreement departs from the Committee's objectives in several important respects.

First, this is the first U.S. investment agreement (either a chapter of a Free Trade Agreement or Bilateral Investment Treaty) that fails to include an investor-state dispute settlement mechanism. The Committee had voiced its strong support for such a mechanism on several occasions. While the Committee recognizes that Australia's law and legal system are highly developed, with a respected and independent judiciary, the

lack of investor-state dispute settlement renders the investment chapter of this Agreement practically unenforceable by U.S. investors since this Agreement is not self-executing under Australian law.

Article 21.15 of the Agreement forbids the parties to create private rights of action for nationals of the other party claiming violations of the Agreement by the host government. Thus, the Agreement's protections cannot be used as a basis to challenge Australian governmental action in Australian courts. While a state-to-state process remains available to enforce the investment Chapter, the Committee notes that such processes have rarely been used in investment disputes and is oftentimes a relatively politicized process. Indeed, it was because of the recognized inadequacy of such procedures that the investor-state mechanism was developed over 30 years ago.

The Committee recognizes that provision was made for the possibility of allowing an investor-state mechanism on a case-by-case basis and that both Australia and the United States are parties to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, which created the World Bank's International Centre for Settlement of Investment Disputes (ICSID) (which sets forth procedures when the parties formally consent to arbitration).

Nevertheless, the Committee remains extremely disappointed by the Agreement's omission of this integral element of investment protection. This is made more serious by the fact that U.S. competitors in Singapore and Hong Kong and other countries having BITs with Australia all enjoy such investor-state protections, putting U.S. companies at a competitive disadvantage.

Second, the Agreement fails to include any protections in the case of a breach of an existing or future "investment agreement," contrary to this Committee's advice. Such agreements, typically defined in U.S. FTAs and BITs as relating to natural resources or other assets controlled by the foreign government, cover many key sectors of U.S. investment activity abroad, including natural resources, construction, infrastructure, and computer and telecommunications networks.

In some cases, U.S. investors are able to negotiate arbitration clauses in such agreements directly with the government, in others they are not or are unable to negotiate acceptable governing law provisions. Therefore, the Committee is disappointed by the Agreement's complete omission of any protections whatsoever for the breach of such agreements particularly given their important economic and security benefits for the United States.

Finally, the Committee notes that the Agreement would 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.

Movement of Personnel

Unlike recent bilateral trade agreements, the U.S.-Australia Free Trade Agreement 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 agreement 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 and other agencies to fashion commercially meaningful and politically feasible temporary entry/personnel movement proposals.

Transparency

Regulatory transparency provisions are an essential companion to trade liberalization. Too often commitments to liberalize trade and investment have been mooted by regulatory decisions taken without benefit of prior publication and comment by the affected interests. The Chile and Singapore Agreements contained very high quality regulatory transparency commitments that are consistent with US practice.

The AFTA provides for notice and comment of proposed new regulations but with an essential difference. Unlike the Untied States, the Australian Government's administrative procedures do not provide for publishing all new final regulations in advance of their effective date. After notice and comment on the draft regulations, the final regulations are often published on the date of their entry into force, not before. However, interested parties are informed of the requirements of final regulations in advance of their effective date.

Thus, for services generally, the Agreement requires that to the extent possible each party shall provide notice of the requirements contained in final regulations prior to their effective date. For financial services, the Agreement requires that to the extent practicable, each party should provide notice of the requirements of final regulations a reasonable time prior to their effective date.

These provisions fall short of the requirements, contained in the Chile and Singapore Agreements, that our trading partners publish their new final regulations prior to their effective date.

In other respects the transparency provisions for financial services improve upon those in our FTAs with Chile and Singapore. The financial services chapter's transparency provisions (but not the services chapter's) provide that to the extent practicable parties shall not only publish regulations in advance but also publish the purpose of the regulations.

The Agreement contains a further improvement in the financial services chapter's provisions relating to applications to provide financial services. This provides that a regulatory authority to the extent practicable inform an unsuccessful applicant of the reasons for denial of his application.

In future FTAs these two improvements should be secured both for services and financial services.

The absence of an exemption from the Agreement's commitments on transparency for sub-federal governments is an important advance in the application of transparency to the regulation of service providers that require licenses or permits - - usually issued at that level of government. This provision should be contained in future FTAs.

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

Accounting Services

The international accounting networks encounter no significant barriers to accessing the Australian market. The FTA preserves this favorable environment. In addition the professions of the two countries have already entered into Mutual Recognition Agreements (MRAs) that establish a simplified process for the professionals of one country to obtain a professional qualification in the other. The US International Qualifications Appraisal Board (IQAB) – a joint body of the US National Association of State Boards of Accountancy and the American Institute of Certified Public Accountants – entered into an MRA with the Institute of Chartered Accountants in Australia in 1996 and renewed the agreement for an additional five years in 2002. A similar agreement was signed with CPA Australia (Certified Practicing Accountants) in 2002. The MRAs are working well and the FTA preserves the right to continue doing so.

Advertising

For the first time in a trade agreement with the United States, Australia has provided access for a complete range of advertising services, including the production, broadcast or screening of advertisements for radio, television or cinema. Although Australia retained significant local content restrictions on ads for broadcast television, the expansion of Australia's trade commitments in this area are meaningful and important.

Architecture

The general provisions of Professional Services Annex 11.9, on the development of professional standards, temporary licensing and review provide for equity and reciprocity in this sector.

The establishment of a Professional Services Working Group will greatly facilitate movement toward harmonization of standards, criteria, and procedures for the provision of architectural services and advance the movement toward the recognition of professional credentials.

Asset Management Services

The FTA advances the asset management industry's market access goals in several respects. Under the agreement it is clear that Australia will afford national treatment and most favored nation (MFN) with respect to provision of services to its civil service pension system. In addition, Australia will permit the cross-border provision of portfolio management services by asset management firms to mutual funds. This important commitment allows a US firm to achieve economies of scale and use its global expertise

in serving Australian clients. The financial services transparency commitments in the agreement also will benefit the asset management industry.

The FTA does not achieve the asset management industry's objective of obtaining significant reform of Australia's restrictive foreign investment regime which affects both portfolio investment and financial services acquisitions. However, the FTA achieves some liberalization of the investment screening rules in certain sectors other than financial services and, through a side letter, seeks to ameliorate the industry's concern that Australia would use its broad screening rules in financial services to arbitrarily impede investment by foreigners in Australia's financial services industry. Another side letter states that Australia will, within eighteen months, review its screening rules with respect to portfolio investment.

Audiovisual Services

The Agreement significantly advances the US film industry's interests in ensuring continued access to this very important market – the eighth largest export market for the US film industry. The Agreement provides a carefully crafted balance between respect for Australia's cultural concerns and predictable access to this important market. Australia will retain a number of existing restrictions on access to its market, including a local content quota on broadcast television and an investment requirement on subscription TV services, but US industry does not view these measures as unduly burdensome. In addition, to accommodate uncertainties relating to technological change in this sector, Australia preserved its ability to take some new measures to assure continued availability of Australian content to Australian consumers, but will have to take US trade interests into consideration in designing any such new measures.

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

With only 1% of the degree granting institutions of the United States, Australia has achieved in excess of 30% of the U.S. market share in education services and therefore is a major U.S. competitor. This FTA succeeds in opening doors for US services in educational levels other than primary and paves the way for negotiations outside of the FTA in such areas as testing services.

Electronic Commerce

The US-Australia FTA contains several substantive modifications to the standard US FTA text on e-commerce. As with previous Agreements, the Australia FTA includes a definition of digital products, assures a zero duty rate on digital products, provides for non-discrimination of digital products, and provides strong language on MFN and national treatment. The Agreement does not include the general cooperative language of previous agreements, but cooperative efforts are incorporated in some new provisions. The text adds provisions that create new reservations and establish language on digital authentication, consumer protection, and paperless trading.

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

The definition of "digital products" is slightly different than those seen in previous agreements. But, the modifications better capture the nature of digital products and it is a useful textual clarification. The text also provides for a zero duty rate on digital products, regardless of their method of delivery – electronic or physical. This is broader commitment than previous agreements that provided only for zero duties on electronic transmissions (in the e-commerce chapter, duties may have been eliminated on physical products in the goods chapters of previous agreements).

Reservations to the chapter are more clearly spelled out than in previous chapters. It does provide the standard reservation for exceptions taken under other chapters. In addition, it provides for (1) primacy to the intellectual property chapter over this chapter; (2) a blanket exception for subsidies and grants in this area; (3) and exercise of governmental authority. It is unclear why these reservations have been placed in the chapter, so ISAC-13 is unable to comment on their relevance. Unlike previous agreements, this text drops an explicit exception for taxes that was included in previous agreements.

In addition, a special exception for audiovisual services is provided but is not a problem given Australia's commitments in audiovisual services.

The text provides language new to the FTAs, by requiring parties to maintain legislation on digital authentication. Importantly, the language establishes principles of technology neutrality and provides legal recourse if authentication systems are challenged. Useful language to work towards mutual recognition of digital certificates by both governments is included.

Consumer protection language is incorporated. We are unaware of previous agreements including this kind of language. The language is fairly straightforward and appears not to represent a potential barrier to trade in electronic commerce.

There is a commitment to paperless trading – that is a general encouragement to move trade administration documents online. This general encouragement of e-government is helpful to trade in digital products between the two countries.

Energy Services

US energy services providers encounter no significant barriers to Australian markets and expect that those conditions will continue under the proposed FTA. FTA provisions related to domestic regulation, transparency, local presence, government procurement and investment reinforce existing practices and are all positive, except with respect to the lack of full investment protections discussed above.

We do regret that the FTA does not include provisions to facilitate the temporary entry of expert, professional and managerial personnel, particularly since certain energy services providers rely heavily on the ability to move highly skilled workers (e.g., oil drillers, construction personnel, etc.) from job site to job site with ease. In practice, there have been few, if any, problems in Australia. Nevertheless, the lack of procedural clarity introduces an element of uncertainty that complicates the deployment of individuals who are at the heart of many of the most complex energy services projects.

Engineering Services

The AFTA appears to have no negative impact on the Engineering Services sector. The establishment of a Professional Services Working Group is a positive step.

Express Delivery Services

The express delivery industry believes the Australia FTA 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 contains important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers. 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 Australia FTA affirms that its chapter on Competition applies to express delivery services. Moreover, it states that each party "confirms its intention to prevent the direction of revenues" to its respective postal supplier (or any other competitive supplier) to benefit express delivery services in a manner inconsistent with its domestic laws and practices. We are concerned, however, that this language creates a minimally 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)

Australia's commitments in the financial services sector (other than insurance and asset management) contained in the proposed free trade agreement with Australia (together with the related listed reservations and limitations) range from acceptable to excellent from the point of view of US industry. In particular, the provisions relating to regulatory transparency in the financial services are excellent – as is appropriate for an agreement between two sophisticated, open and developed economies. We are especially pleased by

the inclusion of a provision requiring each country to include a statement of the purpose of a regulation along with its proposed text.

On the negative side, we regret that Australia has chosen to retain the broad-based foreign investment "screen" embodied in its long-standing Foreign Investment Policy – both in the FIRB and the FSSA. We strongly believe that these limitations on inbound investment on "national interest" grounds are inappropriate in the context of an economy as sophisticated and otherwise open as Australia. That said, we are pleased that greenfield investment and branching by existing financial investors have been excluded from the screening mechanism and that the FIRB investment screen has been subjected to thresholds of A$800 million and 15% or 40% of total ownership. We are also pleased by the contents of the Side Letter on financial services which commits Australia to continuing its practice of restraint in connection with the invocation of the investment screening under the FIRB as well as to a process of government to government consultation and to revisiting the continued utility of the screen itself at regular intervals. It is our hope that, notwithstanding the text of the Agreement, the policy will be affirmatively eliminated in the very near future.

As is emphasized in more detail elsewhere in this ISAC report, we also regret that no investor-state remedies have been included in the Australia FTA. We believe that free trade agreements between the United States and sophisticated trading partners like Australia should embody the highest standards of market access and rights and remedies. Investor-state remedies are a particularly powerful incentive to greater cross-border investment and we strongly believe that such provisions, carefully crafted to protect the contracting states from frivolous litigation, should be included in free trade agreements negotiated by the United States as a way of advancing the cause of trade liberalization. The absence of such provisions in the Australia FTA establishes the wrong precedent for US free trade agreements.

Healthcare Services

Regarding the provision of health care services, such as patient care, hospital management and consulting services, clinic ownership, licensing of health professionals and continuing health care education, we find the Free Trade Agreement breaks no substantial new ground, but also offers no new barriers to trade.

The agreement does contain language found in other FTAs that requires the formation of a Joint Committee that will report in three years on progress made toward establishing standards and procedures for mutual recognition of licensing for professionals. The goal is admirable, and we applaud the framers of the agreement for encouraging medical societies in both Australia and the United States to work toward this goal. However, the experience to date is that the Joint Committees of existing FTAs have made little if any progress on this goal.

The Australian FTA however, includes an additional paragraph on temporary licensing that is encouraging. Again, however, a working group is required to be formed, and must submit a report to the Joint Committee in two years. Treatment of temporary licensing in

the Central American Free Trade Agreements was preferred in that procedures were established that allow for temporary licensing.

Insurance

The comments in the preceding section on financial services concerning investment screening and lack of investor-state remedies also apply to insurance.

With specific regard to insurance, the agreement is comprehensive and provides good treatment for the sector. All major aspects of insurance investment are covered under the financial services chapter (life, non-life, reinsurance, intermediation and services auxiliary to insurance). In addition key cross border insurance products and services are covered (marine, aviation and transport (MAT), reinsurance, intermediation of MAT, reinsurance and insurance auxiliary services). Perhaps the most important new benefit under the agreement is the right to conduct life insurance operations on a branch basis, which has not been permitted in Australia previously.

The agreement also provides useful regulatory and procedural commitments, including promotion of transparency, the opportunity to comment on draft regulations and the notification of regulations prior to them taking effect. In Australia, regulation focuses on focuses authorizing and supervising companies, not on micromanagement through product approval.

Legal Services

Legal services are covered under Chapter 10 applicable to all " Services". The Australian FTA follows the Chilean and Singapore FTA models promising liberal market access for legal service providers of each country in the market of the other. However, the absence of "temporary entry" provisions in the Agreement and the continued maintenance of some restrictive rules of sub-federal units in each country, may limit the effect of the proposed FTA on opportunities for US lawyers seeking access to the Australian market and Australian lawyers seeking market access in the United States. However, we know of no reports of problems encountered by US firms seeking to open offices at least in Sydney nor of difficulties experienced by US lawyers seeking temporary entry to provide their services in Australia. A "stand still" of current rules and practices is required.

Chapter 10 expresses highly desirable steps in the direction of the transparency of domestic regulation that is a priority of the US government for all service providers. Articles 10.7 and 10.9 express commitments that regulations affecting service providers may no more burdensome than necessary to ensure quality of the service and that the licensing of service providers shall not, in themselves, restrict the supply of the service. These commitments (for which there is no reservation in the Annexes) could require a re-examination of existing rules in both countries limiting the delivery of legal services to persons licensed for that purpose in the jurisdiction in which the service is delivered, of particular importance in the context of transnational commercial transactions. Australia has been a leader in reducing the significance of state borders as barriers to the practice of law throughout that country and may autonomously accord such treatment to foreign

lawyers (including U.S. lawyers). At this time, most states of the United States are also autonomously liberalizing their "unauthorized practice" rules.

Access to our respective markets for legal services has developed without a FTA. At this time, a number of U.S. law firms have opened offices in Sydney and at least two Australian law firms have opened offices in New York based on the liberal "foreign legal consultant" rules adopted in the State of New South Wales and the State of New York, respectively. The services commitments in the FTA are also limited by the Annexes of each country reiterating, first, that commitments under the Agreement need be no greater than accepted under the market access provisions of Article XVI of the GATS and, second, do not affect existing rules of sub-federal units affecting otherwise applicable commitments of national treatment, most-favored-nation treatment, removal of local presence requirements, performance requirements or assurance of senior management provisions in Chapter 10. On the other hand, Annex 10-A, devoted to "professional services", commits the Parties to develop standards and to propose mutual recognition arrangements for the consideration of the Joint Committee to expand upon the commitments in the Agreement.

Telecommunications

The telecommunications chapter covers access to and use of the public telecommunications network for the provision of services. It includes all providers of public telecommunications services, with a focus on the major suppliers of those services. It is largely consistent with the U.S.-Singapore Free Trade agreement telecommunications chapter, which is considered to generally encompass very strong telecommunications service trade language. It ensures consistency with each market's regulatory construct, and allows for changes that may occur through new legislation or regulatory decisions.

The chapter includes several important “WTO-plus” obligations for major suppliers, including resale, provisioning of leased circuits and co-location. The chapter also fosters independence of regulatory bodies by disallowing a financial interest in any supplier of public telecommunications services by the regulator. Like the Singapore agreement, it includes a "carve-out" excluding mobile service providers from the definition of major carriers. Although mobile service providers are already required to comply with each party's WTO commitments, their exclusion is not helpful for efforts to ensure cost-based interconnection rates, especially since Australian mobile carriers have recently demanded even higher termination rates. The Australia chapter is marginally less rigorous than the Singapore chapter on transparency, rulemaking, and standard-setting requirements, licensing and dispute resolution.

Vessel Repair

The ISAC welcomes the elimination of the 50 percent U.S. tariff on vessel repairs performed in Australia. 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.
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