

The U.S.-Australia Free Trade Agreement

**Report of the
Agricultural Technical Advisory Committee on Trade
In Fruits and Vegetables**

March 12, 2004

Agricultural Technical Advisory Committee on Trade in Fruits and Vegetables (F&V ATAC)

**Agricultural Technical Advisory Committee on Trade in Fruits and Vegetables
Report to the President, the Congress, and the U.S. Trade Representative on the
U.S.-Australia Free Trade Agreement.**

I. Purpose of the Committee Report

Section 2104(e) of the Trade Act of 2002 (Public Law 107-210) requires that advisory committees provide the President, the Congress and the U.S. Trade Representative 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 a trade agreement.

Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) 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 U.S. 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 on Trade in Fruits and Vegetables submits the following report.

II. Executive Summary of Committee Report

It is the opinion of the F&V ATAC that the negotiated agreement provides for equity and reciprocity within the sectoral area. However, the value of the two markets is asymmetric and hence the inherent value of the agreement is likely to benefit exporters of Australian specialty crops to a greater extent than U.S. domestic producers.

The Committee finds tariff rate eliminations equitable, is disappointed with continued sanitary and phytosanitary barriers, is pleased with the agreement on safeguards for import sensitive products, and disagrees on the legitimacy of the exclusions obtained by sugar and dairy.

III. Brief Description of the Mandate of the ATAC on Trade in Fruits and Vegetables

The ATAC on Trade in Fruits and Vegetables is chartered to advise, consult with, and make recommendations to the Secretary of Agriculture and the United States Trade Representative on matters that are of mutual concern to the United States and to its consumers, producers, processors, and traders of specialty crops in connection with the trade policy activities undertaken by the United States. The Committee provides advice and information regarding trade issues that affect both domestic and foreign production and trade of specialty crops. The Committee furnishes advisory opinions and reports and performs the functions that are appropriate or required by the Secretary and the Trade Representative or their designees.

IV. Negotiating Objectives and Priorities of the Committee

The Committee agrees with the principle negotiating objective for agriculture set down by Congress in the Trade Act of 2002. Specifically, “to obtain competitive opportunities for United States exports of agricultural commodities in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in bulk, specialty crop, and value-added commodities...”

V. Advisory Committee Opinion on Agreement

General:

It is the opinion of the Committee that the negotiated agreement provides for equity and reciprocity within the sectoral area. However, the value of the two markets is asymmetric and hence the inherent value of the agreement will likely benefit exporters of Australian specialty crops to a greater extent than it will benefit U.S. domestic producers.

The U.S.–Australia FTA will provide some economic benefit to a limited number of specialty crop commodities; provide no change in benefits to others, and result in economic losses for import sensitive commodities, over the life of the agreement.

The agreement provides for equity and reciprocity in tariff rate phase-outs. The Committee appreciates that our trade negotiators recognized the sensitivity of some of our U.S. specialty crops and provided an 18-year linear tariff rate phase-out period for these products. The Committee also values the fact that this agreement eliminates all of Australia’s tariffs on Chapter 7, 8 & 20 products immediately upon implementation of the agreement. It would be remiss, however, for the Committee not to mention that Australia’s tariff rates on these products currently range from zero to five percent and have never constituted a significant barrier to trade.

The Committee recognizes that commodity specific sanitary and phytosanitary issues are not negotiated under FTAs. It appreciates that in separate technical meetings there was apparent agreement to resolve the longstanding SPS barrier on Florida Citrus, to initiate

the import risk assessment on U.S. stone fruit, and to provide for the expedited review of U.S. apples. However, at this time, it remains to be seen if these agreements will truly lead to a resolution of the barriers. In the opinion of the Committee, the Australian FTA negotiations did not go far enough to solve a number of long-standing phytosanitary barriers facing U.S. fresh fruits and vegetables. It is hoped that the formation of an SPS Committee and Standing Technical Working Group, as required under the agreement, will lead to the resolution of longstanding market access requests and allow for commercially meaningful access. However, given past experience, the formation of a new SPS committee is no guarantee that U.S. Chapter 7 and 8 fresh specialty crops will obtain access to this market.

As a sector, the Committee is sensitive to the Administration's FTA priorities. It is also mindful of a recent General Accounting Office report that acknowledges trade priorities are established in conjunction with foreign policy needs. However, the slate of concluded and proposed FTAs provides limited export opportunity for Chapter 7, 8 & 20 products. Removing high tariff rate barriers in countries such as India, South Korea, and Japan plus eliminating the trade-distorting domestic support and export subsidies that competitors receive in the European Union are the trade priorities that will provide the specialty crop industry with true equity and reciprocity in the global marketplace in which it competes. These trade priorities are likely to be addressed only in the World Trade Organization. The Committee therefore wholeheartedly supports the Administration as it seeks to immediately resurrect the Doha Development Agenda.

Sanitary and Phytosanitary Measures:

Phytosanitary related trade barriers remain one of the largest constraints facing exports of U.S. fresh fruit and vegetable products. Some fresh fruit representatives see opportunity in Australia if sanitary and phytosanitary barriers can be overcome. While tariff reductions are important, they have no immediate commercial value for products that do not have access to a market due to non-tariff measures. The Committee wants to emphasize the importance of addressing phytosanitary related trade barriers in the context of Free Trade Agreement negotiations. In the opinion of the Committee, the Australian FTA negotiations did not go far enough to solve a number of long-standing phytosanitary barriers facing U.S. fresh fruits and vegetables.

Despite years of technical work and the conclusion of FTA negotiations, only a relatively limited number of U.S. fresh fruits and vegetables have access to Australia. U.S. horticultural products that continue to face phytosanitary related barriers include Florida citrus, U.S. apples and California and Pacific Northwest stone fruit. The Committee believes that long-standing phytosanitary issues should have been dealt with decisively prior to the conclusion of the FTA negotiations. Concerns remain that if or when Congress ratifies the Agreement, the urgency of these issues will be lost and the issues may remain unresolved.

Some products, such as California table grapes and navel oranges, have access to Australia's market yet continue to face evolving phytosanitary barriers. California navel oranges have

experienced these kinds of technical problems which have resulted in decreased shipments over the past five years.

Because of these longstanding concerns, the Committee supports the establishment of the Committee on Sanitary and Phytosanitary Matters and the Standing Technical Working Group. Upon ratification, this system should be aggressively tested, so that if successful, it can serve as a model for future FTAs. As necessary, future FTAs might consider a pre-determined process for moving issues to a third party, such as the International Plant Protection Convention, when such issues cannot be resolved through the bilateral process.

Tariff Phase-Out:

ATAC members requested immediate duty-free access to the Australian market and the longest possible phase-out of U.S. tariffs for most sensitive U.S. specialty crops. U.S. Harmonized Tariff Schedule (HTS) Chapter 20 specialty crops, especially canned peaches, pears, and apricots are very sensitive to Australian imports.

The Committee notes that 11 percent of the U.S. HTS Chapter 7, 8 & 20 tariff lines are currently bound at zero. Under this proposed FTA, 50 percent of the remaining tariffs are reduced to zero at inception, 17 percent are reduced to zero in equal annual reductions over four years, 12 percent are reduced to zero in equal annual reductions over ten years, and 10 percent will face linear phase-outs over 18 years. Australian tariffs, currently at zero to 5 percent for all of HTS Chapter 7, 8 & 20, go to duty free status at the inception of this agreement.

The Committee members support the phase-out periods provided in the agreement. Members who represent highly sensitive products (e.g., canned fruit) had sought product exemptions but are satisfied that an 18-year phase-out (with safeguards in some instances) was provided. Some committee members acknowledge that this is an improvement over the 12-year phase out that was provided in the Chilean FTA and the 15-year phase-out that was provided in the North American Free Trade Agreement (NAFTA), and that this same 18- year phase out should be used for the Free Trade Area of the Americas (FTAA). These committee members believe that this more lengthy time period will help some of the most sensitive industries adjust to changing trade conditions.

The processed citrus members have reviewed the specific preferential origin rules for Articles classified in HTS Chapter 20, and agree with the terms set forth in the Agreement for conferring originating status on citrus juices.

The Committee has reviewed the tariff-rate quota (TRQ) provision of this agreement for the one specialty crop covered and supports the TRQ quantities established.

Agricultural Safeguard:

Under the proposed Agreement, an agricultural safeguard will be available in the event of significant price decreases in certain imported Australian horticultural products. As in the U.S.-Chile FTA, the safeguard mechanism with Australia will permit an *automatic* tariff

increase whenever the unit value of a target import product falls below a specified trigger price. The tariff increase will fall between the MFN and phase-out rates according to a pre-established formula.

Although this mechanism is a relatively new innovation, and one that has not yet been applied in practice, the ATAC members believe it is structurally superior to the safeguard provisions of the U.S.-Canada FTA, which are not automatic and require complicated administrative decisions that turn on both price and historic domestic production levels. The import-sensitive ATAC members that have been designated for safeguard treatment under the proposed Agreement appreciate being scheduled for that treatment.

However, it should also be noted that despite the added element of automaticity in the imposition of safeguards for import-sensitive commodities, the processing citrus industry members point out that the degree of protection afforded by the safeguard is very limited, based on recent prices and production levels for those particular commodities. The application of the same safeguard structure, with the same or similar triggering events, to certain citrus products under other FTAs, would be of little consequence to the affected US industries. For that reason, the processing citrus industry does not see the Australia horticultural product safeguard as a precedent for the same commodities imported from FTAA member countries, particularly for citrus products from Brazil.

Exceptions:

The ATAC members have divergent views respecting the treatment of sugar and dairy under the proposed Agreement. Access for Australian sugar will remain unchanged. For dairy there will be no change in the U.S. MFN above-quota tariff.

In general, those members representing fruits and vegetables with a strong export interest expressed concern that sugar and dairy will not be subject under this Agreement to the complete elimination of tariffs and tariff rate quotas (TRQs) over time. They fear that by sheltering these products from tariff and TRQ elimination, the United States may be signaling to future FTA partners that they may do the same on their sensitive products, which could potentially include products of interest to U.S. export-oriented horticultural sectors.

On the other hand, ATAC members that represent import-sensitive commodities do not believe that comprehensive FTA tariff and TRQ elimination is legally compulsory or even economically justified. In this regard, they point out that the proposed Agreement's treatment of dairy and sugar does not establish a "new precedent." Under the U.S.-Canada FTA, for example, neither dairy nor poultry are subject to open access. Likewise, in CAFTA, sugar is not subject to open access. In general, these ATAC members believe that exceptional FTA treatment is justified for import-sensitive commodities, especially in agreements where the FTA partner represents a net-negative trade impact for U.S. agriculture and/or a serious risk to certain U.S. agricultural sectors, or where global supply and markets are highly concentrated, significantly limiting the theoretical benefits of tariff elimination for selected commodities, such as citrus .

VI. Membership of Committee

Mark Powers	ATAC Chair, Northwest Horticultural Council
Dennis Balint	California Walnut Commission
Gary Ball	U.S. potato industry
John Baranek	The Herzog Company
Doug Bournique	Indian River Citrus League
Susan Brauner	Blue Diamond Growers
Reggie Brown	Florida Tomato Exchange
Lauri Buckley	A. Duda & Sons, Inc.
James Christie	Bryant Christie, Inc.
Gus Collin	Sunsweet Growers, Inc.
Alice Dettwyler	American Agri-Women
Chris Eckert	Eckert Orchards, Inc.
Wally Ewart	California Citrus Quality Council
Nancy Foster	U.S. Apple Association
Carolyn Gleason	McDermott, Will & Emery
Robert Guenther	United Fresh Fruit & Vegetable Association
Dan Haley	Haley & Associates
Julian Heron	Tuttle, Taylor & Heron
John Himmelberg	O'Connor & Hannan, L.L.P.
Richard Hudgins	California Canning Peach Association
Roger Knutzen	Knutzen Farms LP
Barry Kriebel	Sun-Maid Growers of California
Andy LaVigne	Florida Citrus Mutual
Joseph MacIlvaine	Paramount Farming Company
John McClung	Texas Produce Association
Kevin Moffitt	Pear Bureau Northwest
Joel Nelsen	California Citrus Mutual
James Pandol	Pandol Brothers, Inc.
Freddie Richards	Prairie View A&M University
Joe Rollo	Wine Institute
Robert Schramm	Schramm, Williams & Associates
Susan Spence	New York Wine & Grape Foundation
Mike Wootton	Sunkist Growers
Joe Zanger	Casa DeFruta