

*Jim Clawson, Chairman
1620 I Street, NW
Washington, DC 20006
Tel. 202 463-8493
Fax. 202 463-8497
Int: jclawson@moinc.com*

July 9, 2004

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

The Honorable Donald Evans
Secretary
Department of Commerce
Washington, D.C. 20230

Dear Ambassador Zoellick and Secretary Evans:

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 Trade Advisory Committee on Customs Matters and Facilitation (ITAC 14) on the U.S.- Bahrain Free Trade Agreement (FTA), reflecting our consensus advisory opinion on the proposed Agreement.

We also wish to take this opportunity to thank those in your offices who have made the extra effort to keep our committee advised of developments during this time of negotiating these many free trade agreements. It is a pleasure to work with them on these customs issues because the results in the agreement demonstrate that our views and opinions were heard and taken into consideration.

Sincerely,

James B. Clawson

James B. Clawson
Chair
ITAC I4

Enclosure

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

**Report of the
Industry Trade Advisory Committee on Customs Matters and
Facilitation (ITAC 14)**

July 2004

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Industry Trade Advisory Committee on Customs Matters and Facilitation (ITAC 14)

ITAC 14 Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. – Bahrain Free Trade Agreement

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate trade 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, ITAC 14 hereby submits the following report.

II. Executive Summary of Committee Report

The Committee reviewed that part of the agreement that covers customs procedures or is otherwise required to be administered by the customs administrations of the parties. The Committee has not reviewed or commented on the other provisions in the agreement such as procurement, intellectual property or the agriculture and non-agriculture market access provisions. As with previous such agreements, the Committee found this agreement to be fair and balanced. It provides many benefits to U.S. traders. As a result of these positive provisions, the Committee believes the agreement does provide equity and reciprocity in the customs functional area.

III. Brief Description of the Mandate of ITAC 14

The Industry Trade Advisory Committee (ITAC) on Customs Matters and Facilitation is concerned with all aspects of the process of importing and exporting goods through customs services, both domestic and foreign, and, with facilitation of the movement of such goods into and out of customs.

Industry representatives serving on the Customs ITAC provide advice on trade policy matters. Recently, members of the Customs ITAC have provided advice on a range of issues that included: the Trade Facilitation negotiations, the Agreement on Rules of Origin, the Rules of Origin Agreement, as well as provided input to the Harmonized System Committee in the World Customs Organization (WCO). The committee also provided advice and recommendations on the operations and implementation of the Customs Valuation Agreement, and on the various Asia Pacific Economic Conference (APEC) customs recommendations.

Another area of emphasis for the committee was customs-related provisions and trade facilitation measures in the Free Trade Agreement of the Americas (FTAA) and other free trade Agreements. Members of the Customs Committee also worked on WTO trade facilitation efforts and initiatives for the Doha round of trade negotiations, international trade data systems, and customs import security issues.

Industry representatives serving on the Industry Trade Advisory Committee on Customs Matters and Facilitation have a voice in U.S. trade policy formulation through the Industry Consultations Program (ICP), which emerged from the 1974 Trade Act; to ensure that trade negotiators were coordinating with the private sector during trade negotiations. Based on the program's success, the ICP was renewed and expanded by the Trade Agreements Act of 1979 and the Trade and Competitiveness Act of 1988. The Department of Commerce, the Office of the United States Trade Representative (USTR), and other agencies work side-by-side with business leaders who serve as advisors to the U.S. Government. The Department of Commerce and USTR have joint responsibility for operating the Advisory Committees of the ICP.

IV. Negotiating Objectives and Priorities of the Committee

While a number of areas were negotiated as part of the U.S. – Bahrain Free Trade agreement that could have customs implications, there were several principal objectives of the Committee. The functions of the import process and how it is administered can make the agreement more successful for the benefit of traders or it can maintain non-tariff barriers to that trade. Another objective was to ensure that the rules and regulations are transparent and understandable to all traders including small and medium sized enterprises. We also wished to ensure that the agreement included a mechanism to keep those practices for import and export current with business “best practices.”

To provide advice on these objectives the Committee commented on the following issues:

A. Adherence by Bahrain to existing customs conventions including:

- Harmonized Commodity Coding System (HS)
- WTO Agreement on Customs Valuation
- ATA Carnet
- Rules of Origin Agreement
- Drawback
- Pre-shipment Inspection Agreement

- Trade Facilitation

- B. Use of electronic import processing including use of electronic certification of origin.
- C. Advance rulings on compliance with import regulation requirements.
- D. Reducing import clearance times.
- E. Adoption of clear and transparent rules of origin for determining eligibility of products for trade preference programs with an appeal process. The rules of origin should be consistent across the various FTAs with a preference for tariff shift based rules rather than a GSP value added type rules.
- F. Mechanisms to keep customs rules updated and current with best practices.

V. **Advisory Committee Opinion on Agreement**

With experience from several previous Agreements and the work underway in the Doha Round and Free Trade Agreement for the Americas (FTAA), the customs sections of the Bahrain agreement substantially meet the Committee objectives. The U.S. negotiators met regularly with the Committee and solicited advice. They were responsive to the unsolicited advice from the Committee as well. From the results included in the Agreement, it is apparent that the negotiators accepted the Committee's advice and sought to achieve all of the objectives of the Committee. On balance, the agreement provides equity and reciprocity in the customs areas.

The following is a more detailed description of some of the customs provisions that the Committee believes our negotiators were successful in reaching the objectives of the Committee.

- **General Provisions**

The Committee reviewed the customs section of the agreement and is pleased that so many of the current best practices have been included in those provisions. From the 48-hour release of goods standard to the need to make the rules and procedures available to the public, the coverage of agreed to practices implements many international customs guidelines. The recommendation to use risk assessment principles and the requirement to provide a review and appeal process from customs determinations are significant provisions for the benefit of traders.

- **Definitions**

The definitions section provides clear and beneficial descriptions for the terms, Temporary Admission; Waste and scrap; Used goods; Recovered goods; and especially Remanufactured products.

- **Rules of Origin**

The Committee reviewed this section for process, not application of the rules. Determination of whether the application of the rules meets the objectives of specific sectors is left to each sector. For process, the origin sections provide for clear rules, and the section on Customs Administration provide the ability to request advance rulings on the origin rules, and an avenue for appeal of those rulings. These provide for more efficient administration of the rules.

The Committee also reviewed the specific structure of the rules, which are based on the U.S.

GSP system and provide a two-tiered origin structure that includes the application of: (1) a substantial transformation test; and (2) a requirement that the value of materials plus the direct cost of processing not be less than 35% of the appraised value. While the Committee appreciates the effort to negotiate a rule of origin structure that avoids product-specific rules, the Committee is concerned that this agreement marks another departure from the goal of establishing a consistent rule of origin system governing all of our bilateral and multilateral free trade arrangements. Moreover, the Committee remains concerned about the inclusion of a value-based rule of origin system that marks the continuation of a movement away from the more predictable and less burdensome tariff shift rules that have characterized previous free trade agreements outside of the Middle East.

Some members of the Committee noted that rules on fungible goods were not included in this Agreement.

- **Certification of Origin**

The negotiators were able to obtain excellent provisions for the handling of origin certification. The “deemed to certify” language is a great step forward in obtaining efficiency in the release of goods. A certificate need only be available upon request. There is no stipulated format but only required data elements. This allows traders to use commercial documents.

- **Customs Commodity Classification**

We recommended to the negotiators that parties to the agreement adhere to and use the 2002 version of the World Customs Organization’s (WCO) Harmonized Commodity Coding and Classification System (HS). Bahrain has accepted the HS so no special provision was necessary. They should be using the 2002 version and we encourage the negotiators to ensure both parties are using the latest version at all times.

- **Valuation**

The Committee also believes that all parties should be obligated to and using the World Trade Organization (WTO) customs valuation system (Agreement on Implementation of Article VII of GATT 1994). That use should be transparent in application, include a binding ruling process. Those requirements were included in the agreement.

- **Dispute Resolution**

The Dispute Resolution procedure in the Agreement is well thought out and appears to be workable.

- **Trade Facilitation**

The Committee is pleased that the agreement includes trade facilitation provisions. Trade facilitation is mainly directed to procedures and associated with conformance to standards and information flows that control the international movement of goods and means of payment. With the assistance of improved information technologies, market forces have effected improvements in commercial procedures in recent years. However, obstacles continue to prevent and delay the efficient movement of goods and means of payment across borders, especially in the area of Customs’ applications.

The Committee believes that trade facilitation is an absolutely essential ingredient of trade negotiations, and even more so in the light of the recent dramatic downturn in the global economy. Trade facilitation provisions should be focused on the simplification and harmonization of Customs procedures and practices. The process should be transparent and predictable. They should also require Parties to maintain appropriate measures to ensure efficient and fair Customs facilitation of goods that are imported and/or exported by express delivery services suppliers. The agreement's provisions do that. However, we are disappointed with the agreement's inclusion of a six-hour target for release of express shipments; we would urge that future agreements aim to cut that target at least in half.

▪ **Other Provisions**

Other provisions have met the objectives of the Committee. The Committee was pleased to see the provisions on e-commerce and the treatment of digital goods for customs purposes on carrier media only and not on the digital content.

VI. Membership of Committee

The Committee is fortunate to have both customs experts and representatives from the industry sector committees. The customs expert members are:

Ms. Marietta Bernot
Mr. James Clawson
Mr. Donald Deline
Ms. Margaret Gatti, Esquire
Mr. Robert Leo, Esquire
Mr. John McGovern
Mr. Selig (Sandy) Merber, Esquire
Ms. Susan Presti

Ms. Darcy Price
Mr. Lauren Rachlin, Esquire
Mr. Gilbert Lee Sandler, Esquire
Ms. Marjorie Shostak, Esquire
Ms. Evelyn Suarez, Esquire
Mr. Max Turnipseed
Mr. Charles Uthus
Mr. George Weise