

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, N.W.
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 Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products & Services on the Free Trade Agreement between the USA and Bahrain.

Very truly yours,

Geoffrey Gamble

Chair ITAC - 3
Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products & Services

USA – Bahrain Free Trade Agreement

Report of the
Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products &
Services [ITAC-3]
July 14, 2004

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Advisory Committee Report to the President, the Congress and the United States Trade Representative on the USA - 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 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 Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health/Science Products & Services hereby submits the following report.

II. Executive Summary of Committee Report

We believe that the negotiating objectives and priorities of ITAC-3 regarding the Bahrain FTA, with the exception of the subject of rules of origin, have substantially been met. Because of concern over the rules of origin language, industry sector representatives on ITAC-3 have struggled but have successfully reached a consensus that the Agreement promotes overall the economic interests of the United States as well as providing for equity and reciprocity within the chemicals, pharmaceuticals, and science products sectoral areas.

III. Brief Description of the Mandate of ITAC-3

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

Adhesives and Sealants

Rubber and Rubber Articles

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

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
Health Services

The product 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 and 55.

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, Bahrain 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. 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], have 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 FTA/s 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 FTA/s, including the Free Trade Area of the Americas (FTAA), 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 FTA/s, as well as the broader FTAA, for the elimination of tariffs and non-tariff barriers. ITAC-3 also favors immediate tariff elimination for the pharmaceutical sector in all FTA/s and in the FTAA, 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 insurance 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 insurance 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, and the Chile, and Singapore FTA/s.

Mr. Waskow 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 this objective. 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 rules of origin and investment, where this Agreement may serve as a template for future FTAs.

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

Chapter 1: Establishment of the Free Trade Area and Definitions

No comment.

Chapter 2: Market Access

We would have preferred that Bahrain had committed to offer the entire chemicals section for duty free treatment upon implementation, as did the United States. However, since there are so few exceptions, none of which are actively traded, we applaud the results that USTR's achieved in our sector.

Chapter 3: Textiles & Apparel

We are concerned about the inclusion of the elastomeric fiber exemption under the de minimis rules for textiles. This limitation, treating elastomerics differently than all other yarns/fibers, severely restricts the economic growth opportunities for American cotton and man made fiber producers, yarn and fabric manufacturers, and apparel makers.

Chapter 4: Rules of Origin

We are very concerned about the rules of origin that have been negotiated in this Agreement. They are based on GSP rules of origin, and include a value content test and the notion of substantial transformation. We remain opposed to FTAs that use these outdated concepts. We are concerned that our international competitors will set up export platforms in Bahrain in order to take advantage of comprehensive duty free access to the US market.

We are also concerned that this is the third recent agreement concluded in this region with these rules, Jordan being the first and Morocco the second. Long ago the US – Israel FTA contained the GSP-based rule. We continue to hope that the USTR will work

to secure more practical rules in the upcoming negotiations with other Middle Eastern Economies and SACU, as well as 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

No Comment

Chapter 6: Sanitary and Phytosanitary Measures

No Comment

Chapter 7: Technical Barriers to Trade

No Comment

Chapter 8 Safeguards:

No Comment

Chapter 9 Government Procurement

No Comment

Chapter 10: Cross-Border Trade in Services

No Comment

Chapter 11 Financial Services

No Comment

Chapter 12 Telecommunications

No Comment

Chapter 13 Electronic Commerce:

No Comment

Chapter 14 Intellectual Property Rights:

Chapter 15 Labor:

No comment

Chapter 16 Environment:

No Comment

Chapter 17 Transparency:

No Comment

Chapter 18 Administration of Agreement:

No Comment

Chapter 19 Dispute Settlement:

No Comment

Chapter 20 Exceptions:

No Comment

Chapter 21 Final Provisions:

No Comment

Annexes:

No Comment

Other Documents:

No Comments

VI. Membership of Committee

Chairman

Geoffrey Gamble, Esquire,
Chief International Counsel
Director of International Government Affairs
E.I. du Pont de Nemours & Company

Vice-Chairman

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

Ms. Lori M. Anderson, CAE
Strategic Planning & Industry Relations Officer
The Society of the Plastics Industry, Inc

Ms. Katherine M. Dutilh
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Milliken & Company

Matthew T. McGrath, Esquire
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Representative of InterMune, Inc.

Ms. Shannon S. Herzfeld
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Mr. Brian Mannix
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Mercatus Center, George Mason University

Mr. K. James O'Connor
Director, International Trade
American Chemistry Council

Mr. Isi Siddiqui
Vice President, Biotechnology & Trade
CropLife America

2nd Vice Chairman

Robert E. Branand, Esquire,
Representative
National Paint & Coatings Association

Mr. Morris A. Chafetz
President
Hemisphere Polymer & Chemical Co

Mr. Donald E. Ellison
Representative of SACMA
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Ms. Mildred W. Haynes
Manager, Government Relations
3M Company

Ms. Nancy R. Levenson
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S.C. Johnson & Son, Inc.

Ms. Rosemary L. O'Brien
Vice President, Public Affairs
CF Industries

Mr. John C. O'Connor
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Mr. Louis G. Santucci
Director, Trade Regulation & Legislation
Cosmetic, Toiletry & Fragrance Assoc.

Mr. Arthur J. Simonetti
Director, Trade Regulation and Legislation
Honeywell International, Inc.

Ms. Lisa Schroeter
Director of International Policy
The Dow Chemical Company

Mr. Ford B. West
Vice President, Government Relations
Fertilizer Institute

Mr. Gerry Prout
Vice President, Government Affairs
FMC Corporation

Ms. Karil Kochenderfer
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Environment & New Technologies
Grocery Manufacturers of America

Mr. Peter Spitz
Chemical Advisory Partners
Representing PolyOne Corporation

Mr. Jay Robinson
President
Color Pigment Manufacturers Association

United States Government:

Mr. Man K. Cho
Designated Federal Officer
United States Department of Commerce

Mr. Henry P. Stoebenau
Representing
American Assoc. of Exporters & Importers

Ms. Aracelia Vila
Vice President, Public Affairs
Schering-Plough Pharmaceuticals

David Waskow, Esquire
Trade & Investment Policy Coordinator
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W. Martin Strauss, Ph. D.
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Monsanto Company

Mr. Craig Kramer
Executive Director, International
Government Affairs
Johnson & Johnson

Mr. Cal Sutphin
President
Braden Sutphin Ink Company

Mr. Lloyd Moon
Vice President
Crompton Corporation

Ms. Barbara Norton
Liaison
Office of the United States Trade
Representative