

February 26, 2003

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 Sector Advisory Committee on Consumer Goods (ISAC-4) on the US-Chile Free Trade Agreement, reflecting consensus advisory opinion on the proposed Agreement.

Sincerely,

/S/

Donald M. Nelson
Chair, ISAC-4

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

Report of the
Industry Sector Advisory Committee on Consumer Goods (ISAC-4)

February 2003

February 24, 2003

Industry Sector Advisory Committee on Consumer Goods (ISAC-4)

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the US-Chile 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, ISAC-4 hereby submits the following report.

II. Executive Summary of Committee Report

ISAC-4 members endorse the U.S.-Chile FTA's comprehensive nature. We believe the agreement will deliver important benefits to consumer goods firms in terms of market access, regulatory transparency, and customs procedures. Further, we generally support provisions on intellectual property and investment, with a few specific reservations.

III. Brief Description of the Mandate of ISAC-4

The Committee advises the Secretary of Commerce 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-4

“Consumer Goods” covers a wide array of products, including: sporting goods, furniture, appliances, toys, processed foods and beverages, jewelry, household utensils, motorcycles, cleaning products, and power equipment. Consequently, the primary objective for the U.S.-Chile Free Trade Agreement was that of comprehensiveness. ISAC-4 members take particular interest in the following seven aspects of the agreement: market access for industrial goods; market access for agricultural goods; intellectual property; investment; customs procedures; regulatory transparency; and services.

V. Advisory Committee Opinion on Agreement

ISAC-4 members endorse the comprehensive nature of the U.S.-Chile FTA, and believe its terms represent an advance in many aspects: Specifically:

a. Market Access for Industrial Goods – Most of the goods manufactured by ISAC-4 members are classified as industrial products. Market access terms affect both intermediate and finished goods. We endorse the accelerated tariff phase-out schedules on most industrial goods, noting that on a trade-weighted basis over 85% of trade will become duty-free upon entry into force. This rapid implementation will offset the existing competitive disadvantage faced by U.S. exports versus those of Mexico and Canada on key consumer goods like paper products.

b. Market Access for Agricultural Products – ISAC-4 includes a number of processed food manufacturers, as well as wine and spirits producers. Further, a number of important industrial products used in the production of consumer goods (like natural alcohols) are classified as agricultural goods. We believe the phase-out of Chile’s price band system is an important accomplishment. Further, we commend negotiators for improving market access for processed foods, including tariff harmonization on wines. We are extremely pleased that the agreement incorporates explicit recognition of Bourbon and Tennessee Whiskey as distinctive products of the United States. These provisions may help mitigate some of the uncertainty that arises for spirits producers from the provisions on geographical indications, as discussed below. We note with interest the renewed commitment on resolving sanitary and phytosanitary (SPS) issues. For SPS, we would advise that this commitment be implemented through a stronger consultation mechanism.

c. Intellectual Property (IP) – Consumer goods firms are among America’s leading innovators, and have strong interest in the protection of Trademarks, Patents, and Trade Secrets. In our estimation, the IP chapter of the U.S.-Chile FTA represents a major improvement in IP protection and a useful benchmark for future agreements. In general, we applaud the application

of the “first in time, first in right” principle to trademarks and geographical indications. This may serve as a useful precedent. We note, however, that the comprehensive provisions regarding geographical indications in general and the relationship between geographical indications and trademarks plow new ground. They raise a number of questions for distilled spirits producers in particular as to how these provisions will be applied in practice both in the United States and in Chile. The adoption of the principle of exclusivity with respect to the term “Bourbon,” for example, may require significant changes in U.S. trademark practice; the extent and implications of these changes are not yet known. Further, we note the enhanced protections for trade secrets, including the protection from government disclosure of test data and trade secrets submitted for the purpose of product approval. Regarding enforcement, the agreement meaningfully strengthens Chilean law for IP violations.

d. Investment – Many consumer goods firms compete by establishing operations close to the consumer. These firms rely on the high standards of investor protection found in U.S. Bilateral Investment Treaties (BITs). The Investment chapter of the U.S.-Chile FTA appears to secure a predictable legal framework. Further, we note and appreciate the elimination of local content requirements. We observe with some concern two elements of the Investment chapter, which could be interpreted as a step backwards in protection. First, an unnumbered Annex (footnote 18) concerning expropriation contains the following language:

“2. An action, or series of actions, by a party cannot constitute an expropriation unless it interferes with a tangible property right or property interest in an investment.”

We are concerned that the terms, “property right” and “property interest,” are not defined anywhere in the Investment chapter. Different legal systems define these terms differently, and the absence of an agreed definition could lead arbitrators to turn to local law rather than the treaty. This formulation does not appear in model U.S. BITs. Second, with respect to the Minimum Standard of Treatment, we note that Chapter 10.5 paragraph 1, Chapter 10.5 paragraph 2, and an unnumbered Annex (footnote 17) each present different formulations. This is inconsistent with U.S. BITs, and introduces an element of ambiguity which would complicate matters for arbitrators in the future.

e. Customs Procedures – ISAC-4 member firms rely on efficient, predictable administration at the border. We strongly endorse the U.S.-Chile FTA’s specific obligations on customs procedures, as well as the transparency requirements. Rules of origin for goods exported by ISAC-4 firms appear straightforward; the administrative framework also appears adequate.

f. Regulatory Transparency – Consumer goods are subject to a wide range of regulation wherever they appear in commerce. We applaud negotiators for security detailed disciplines on regulatory transparency. Our experience under the NAFTA has been that regulatory transparency is a critical factor in improving the business climate for all firms.

VI. Membership of Committee

See Attachment I.

Attachment I

Don Nelson, Altria Corporate Service, Inc., ISAC 4 Chairman
Timothy Hoelter, Harley-Davidson Motor Company, Vice Chairman
Russel Batson, American Furniture Manufacturers Association
Phillip Brandl, National Housewares Manufacturers Association
Thomas Catania, Whirlpool Corporation
Tom Cove, Sporting Goods Manufacturers Association
Robert Fay, Incredible Technologies, Inc.
Charles Husick, Vernal Air System
Steven Jacober, School, Home, and Office Products Association
Deborah Lamb, Distilled Spirits Council of the United States
Larry Lasoff, representing the Outdoor Power Equipment Institute, Inc.
Justin LeBlanc, National Fisheries Institute
Barry Levy, representing the Toy Manufacturers Association of America
James Marquart, Manufacturing Jewelers & Suppliers of America, Inc.
Patrick McDonough, representing Libbey, Inc.
Scott Miller, Procter & Gamble Corporation
Barclay Resler, Coca Cola Company
Michael Rudowicz, American Amusement Machine Association
Hugh Rushing, Cookware Manufacturers Association
E. Peter Rutledge, representing Brown-Forman Beverages Worldwide
Norman Sharp, Cigar Association of America, Inc.
Thomas St. Maxens, representing Mattel, Inc.
Catherine Suttmeier, Oneida Ltd.
John Thompson, Hall China Company