

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 U.S.-Singapore Free Trade Agreement, reflecting the consensus opinion of ISAC-4 on the proposed Agreement.

Sincerely,

Donald Nelson
Chair, ISAC-4

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

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

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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 U.S.-Singapore 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 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.-Singapore FTA. The Agreement ensures that Singapore's market will remain open to U.S. consumer goods products, and improves market access with respect to several specific products of interest to ISAC-4 members. The provisions regarding customs administration should be very helpful in expediting the customs clearance process and providing for fair and impartial adjudication of customs-related disputes. The Committee also generally supports the provisions on technical barriers to trade, investment, intellectual property, and transparency, with a few specific reservations. Overall, the Committee believes that the agreement provides for equity and reciprocity within the consumer goods sector.

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

The consumer goods sector represented by ISAC-4 covers a wide array of products, including: sporting goods, motorcycles, furniture, appliances, toys, processed foods and beverages, jewelry, household utensils, cleaning products, and power equipment. Most consumer goods enjoyed duty-free access to the Singapore market before the U.S.-Singapore Free Trade Agreement (FTA) negotiations began. Accordingly, ISAC-4's primary objective for the U.S.-Singapore FTA was to improve and enhance market access in Singapore by dismantling existing non-tariff barriers and ensuring that any non-tariff measures do not in the future hamper U.S. consumer goods exports. Although not a principal focus of ISAC-4, Committee members also applaud the comprehensive provisions of the FTA relating to trade in services, including the significant market access improvements achieved in a wide range of services sectors.

ISAC-4 members take particular interest in the following six aspects of the agreement: national treatment and market access for goods; customs administration; technical barriers to trade; investment; intellectual property; and transparency.

V. Advisory Committee Opinion on Agreement

ISAC-4 members endorse the comprehensive nature of the U.S.-Singapore FTA, and believe its terms represent an advance in a number of respects. Overall, the Committee believes that the agreement provides for equity and reciprocity within the consumer goods sector. We offer the following comments on the provisions of the agreement that are of principal interest to consumer goods producers:

a. National Treatment and Market Access for Goods – As noted, nearly all U.S.-origin products entered the Singapore market duty-free before the FTA negotiations began. Nonetheless, the Committee applauds Singapore's agreement to eliminate all remaining customs duties immediately upon entry-into-force of the agreement, unequivocally meeting one of the principal negotiating objectives set forth in the Trade Act of 2002 (section 2102(b)(1), relating to the elimination of trade barriers and distortions).

The Committee further endorses the accelerated U.S. tariff phase-out schedules on nearly all of Singapore's exports, noting that 92% of the current tariffs on imports from Singapore will be eliminated upon entry-into-force of the agreement.

We also applaud the agreement's explicit endorsement of the fundamental GATT 1994 principle requiring non-discriminatory treatment with respect to the imposition of excise and other internal taxes. Singapore's agreement to harmonize by 2005 its excise taxes on distilled spirits is a very welcome development. We were, however, disappointed, that, unlike the U.S.-Canada FTA, the North American Free Trade Agreement, and the recently-concluded U.S.-Chile FTA, the U.S.-Singapore FTA does not incorporate explicit recognition of Bourbon and Tennessee Whiskey as distinctive products of the United States. We urge U.S. negotiators to seek the incorporation of this important protection into the agreement at the earliest opportunity.

b. Customs Administration and Other Customs Provisions – ISAC-4 member firms rely on efficient, predictable administration at the border. We strongly endorse the U.S.-Singapore FTA's specific obligations on customs procedures, as well as the transparency requirements.

The FTA's provisions mandating each Party to provide for the issuance of written advance rulings will establish an even more stable business environment, and the requirements regarding independent administrative review and judicial review of customs matters will provide further protections for U.S. business. In addition, the provisions regarding the release of goods should help expedite customs clearance procedures. We also strongly support the provision requiring the immediate elimination of the merchandise processing fee for originating goods. The Committee wholeheartedly endorses these provisions and believes they will set a useful precedent for other free trade agreements.

The rules of origin for goods exported by ISAC-4 firms appear straightforward; the administrative framework also appears adequate. The Committee notes, however, that these rules of origin, though generally modeled after the NAFTA rules, do not reflect certain changes to the NAFTA rules with respect to, *e.g.*, distilled spirits, that became effective on January 1, 2003. The Committee recommends that, consistent with the consultation and modification provisions of the agreement, the Parties consider making conforming changes to the rules to provide, where requested, greater consistency of the rules of origin among the various free trade agreements.

c. Technical Barriers to Trade (TBT) – Increasingly, consumer goods producers confront a complex and growing array of technical barriers to trade, including onerous and unnecessary labeling requirements, arbitrary or discriminatory product standards, and complex and costly conformity assessment requirements. The Committee, therefore, strongly endorses the provisions of the U.S.-Singapore FTA calling for greater cooperation in the areas of technical regulations, standards, and conformity assessment procedures; these provisions are fully consistent with the applicable mandate in the Trade Act of 2002 (section 2102(b)(8) regarding regulatory practices). We hope that the consultation requirements will apply equally to the development of standards and technical regulations, just as they apply to the application of such measures.

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.-Singapore FTA appears to

secure a predictable legal framework, as contemplated in the Trade Act of 2002 (section 2102(b)(3)) regarding foreign investment. However, we observe with some concern two elements of the Investment chapter which could be interpreted as a step backward in protection. First, the “Exchange of Letters on 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 or intangible 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. Second, the Investment Chapter and the “Side Letter on Customary International Law” introduce somewhat different formulations concerning the minimum standard of treatment. This ambiguity may create confusion for arbitrators. Neither the notion of property rights/interests nor the complex discussion of standard-of-treatment are consistent with U.S. BITs.

e. 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.-Singapore FTA represents a major improvement in IP protection and a useful benchmark for future agreements. With respect to trademarks, the application of the “first in time, first in right” principle to trademarks and geographical indications may serve as a useful precedent. We note, however, that the provisions regarding the relationship between geographical indications and trademarks 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 Singapore. The adoption of the principle of exclusivity for trademark owners with respect to the term “Bourbon,” for example, may require significant changes in U.S. trademark practice and labeling requirements; the extent and implications of these changes are not yet known.

We fully endorse the strong IP enforcement provisions, which should serve to strengthen intellectual property protection in Singapore. Overall, the IP provisions meet the objectives set forth in the Trade Act of 2002 (section 2102(b)(4) regarding intellectual property).

f. Transparency – Consumer goods are subject to a wide range of regulations wherever they appear in commerce. We applaud negotiators for securing detailed disciplines on regulatory transparency, consistent with the Trade Act of 2002 mandate (section 2102(b)(8) on regulatory practices). 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 Services 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