ISAC - 3

Industry Sector Advisory Committee for Chemicals and Allied Products

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 revised report of the Industry Sector Advisory Committee for Chemicals and Allied Products on the Free Trade Agreement between the United States and Singapore, reflecting consensus on the proposed Agreement.

Very truly yours,

Geoffrey Gamble
Chair
ISAC-3

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

Report of the
Industry Sector Advisory Committee for Chemicals and Allied Products
(ISAC-3)
Revised March 17, 2003

March 17, 2003

Industry Sector Advisory Committee for Chemicals and Allied Products (ISAC-3)

Revised Advisory Committee Report to the President, the Congress and the United States Trade Representative on SINGAPORE

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 Sector Advisory Committee on Chemicals and Allied Products hereby submits the following report.

II. Executive Summary of Committee Report

We believe that the negotiating objectives and priorities of ISAC-3 with regard to the U.S.-Singapore FTA, incorporated by reference in Section IV hereinbelow, have substantially been met. Industry sector representatives on ISAC-3 are of the opinion that the agreement overall promotes the economic interests of the United States and provides for equity and reciprocity within the chemicals, pharmaceuticals, and allied products sectoral area. One of the environmental representatives on ISAC-3, Mr. Waskow, concurs in part and provides additional views as indicated in the text. Another of our environmental representatives, Mr. Mannix, concurs in the Report with the exception of Mr. Waskow's comments found in the text pertaining to investment and the environment.

III. Brief Description of the Mandate of ISAC-3

ISAC – 3, the Industry Sector Advisory Committee for Chemicals and Allied Products, in addition to counting representatives of the environmental community amongst its members, represents the following sectors and subsectors:

Adhesives and Sealants
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
Rubber and Rubber Articles
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

The product sector coverage (as listed above) for ISAC – 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.

For the record, despite monthly requests from its membership, the Government called no meetings of ISAC-3 from June 2000 until April 2001, a period of 11 months, and from March 2002 until February 2003, a period of more than 10 months. Thus, in the past two and a half years, or 30 months, virtually the entire time that the US-Singapore and US-Chile FTAs were being negotiated, ISAC-3 was unable to function for 21 of those 30 months.

The lack of opportunity to engage in an interactive dialogue with the Government negotiators as the agreements took shape has left the chemicals, the pharmaceuticals, and allied industries in a very disadvantageous position in discharging their statutory duties under ISAC-3 of rendering a collective opinion as to whether the agreements promote the economic interests of the United States, achieve the 2002 Trade Act objectives, and provide for equity and reciprocity within our collective sectoral area.

Nevertheless, with the help of the Department of Commerce and the Office of the United States Trade Representative, ISAC-3 has done its best to discharge its statutory obligations.

IV. Negotiating Objectives and Priorities of ISAC-3

On June 19, 2001, ISAC-3 wrote to you and the Secretary of Commerce the following letter:

> Please consider this letter as advice and comments from ISAC-3 concerning the proposed U. S. - Singapore FTA. Since we had not allowed to meet for 10-months prior to our April 4th [2001] meeting to receive briefings from USTR and to discuss what our advice would be, our meetings on 4 April and 16 May along with this letter are the first opportunities for us to arrive at a consensus among our members concerning the proposed U.S.-Singapore Free Trade Agreement (FTA).
>
> Singapore is a very important country to ISAC-3 and we applaud efforts to move forward toward a free trade agreement with Singapore. Because of Singapore's strategic importance, however, any such agreement must be carefully thought out. With an extended negotiating time frame apparent, we request that our advice be taken fully into account. While supportive of a FTA with Singapore, we urge that full consideration be given to all private sector concerns and recommendations.
>
> Several recommendations follow to ensure that the chemical and pharmaceutical industry concerns are integrated into the FTA:
>
> **1. Build the political base of support needed to achieve eventual Congressional approval of the proposed FTA.**
>
> We recognize there are time and constraints on the negotiations, however, consulting with industry prior to launching formal negotiations would have been more effective in capturing the full array of U.S. trade and investment objectives and would have ensured that the FTA was balanced in all areas. At this point, we believe this procedural shortcoming could be corrected by slowing down the negotiating process to give the private sector time to respond fully.
>
> **2. Based on the fact that Singapore's tariffs are already negligible, the U.S. needs to develop the benefits of a bilateral accord to American companies and workers by exploring and identifying improvements in other areas of Singapore's trade and investment policies.**
>
> This can be accomplished by upgrading the protection of intellectual property rights, customs procedures, government procurement, standards and conformity assessment, rules of origin, property ownership, services and other sector-specific matters.

Since the United States and Singapore do not presently have a Bilateral Investment Treaty (BIT), the proposed FTA should address investment issues, using the model BIT as the standard.

The FTA should include an effective dispute settlement mechanism.

3. With the openness already provided by the World Trade Organization (WTO), the FTA should, where appropriate, seek to improve on this openness.

A U.S.-Singapore FTA should complement other regional and multilateral initiatives aimed at further liberalizing trade and investment flows.

Of particular interest in this instance is the "Pacific 5" (P5) initiative that would involve Singapore, Chile, Australia, New Zealand and the United States. The P5 endeavor offers significant market access prospects and is important to U.S. industry. Thus, it is important that a bilateral FTA with Singapore serves as a means to advance that effort.

4. The chemical and pharmaceutical industry believes that binding labor and environment provisions with Singapore deserves careful and serious deliberations with input from all interested groups.

The inclusion of such measures in trade agreements is a highly controversial subject. We strongly urge the Administration not to disregard the views of other industries, businesses, and civil society in this matter. We suggest a slower, consensus building approach, rather than a quick deal that has little chance of Congressional approval.

5. If the FTA negotiations focus on Singapore's trade in services restrictions and expanding U.S. business opportunities, how will this affect the subsidiary/affiliate joint venture structures U.S. companies already have on the ground?

The bulk of U.S. investments in Singapore are in the areas of electronics manufacturing, oil refining and storage, and chemicals. The investments in these facilities have been significant and were made taking into account the practical reality of the current trade regime. The implementation of any FTA needs a preliminary analysis of the disruption and affect the Agreement will have on these investments.

6. 65 Fed. Reg. 71197 (November 29, 2000) notes that the U.S.-Singapore FTA "will be modeled upon the recently signed free trade agreement

between Jordan and the United States, but will recognize the substantial volume of trade between Singapore and the United States."

The use of the Jordan FTA as a model for Singapore presents certain challenges, especially considering the broad parameters of the proposed FTA with respect to tariff rates and the proposed stages of phase down to zero. While we understand that specific terms have not been agreed to beyond the parties' concurrence that all tariff rates be eliminated within ten years, we do not want the Jordan phase down schedule applied to the chemicals sector in the Singapore Agreement.

The trade implications of dealing with Singapore are quite different from those of Jordan in many sectors including chemicals. If the Jordan FTA type phase down were to be used with Singapore, it would in all likelihood become a precedent for other countries that have significant chemical production and trade with the United States, but who, nevertheless, are not yet part of the Uruguay Round Chemical Tariff Harmonization Agreement (CTHA).

Furthermore, shippers of chemicals through Singapore from other countries destined for the U. S. may find ways to meet rules of origin requirements that would then afford them the rates intended only for products actually made in Singapore. Certainly some of the other ASEAN countries would be expecting similar tariff treatment in any future FTAs with them, and some of them are not yet at CTHA levels. This is why the rules of origin and related rules on transshipment negotiated for this FTA are so important.

With respect to contemplated tariff rates and phase down schedules, at least for the chemicals sector, ISAC-3 proposes the following revisions to the referenced "model" of U. S. tariff rate elimination in the Jordan FTA.

If U. S. Tariff Rates are:	Then Phase Out to Zero:
0 - 5%	Over 2 Years
6 - 9%	Over 4 Years
10-15%	Over 8 Years
> 15%	Over 10 Years

Over 200 tariff heading rates in the U. S. chemicals sector still exceed 9%, so it does not seem reasonable that all of those rates should go to zero in 5 years in a FTA with Singapore, as would be the case if the

Jordan "model" is used. ISAC-3 hopes to have further opportunities to be consulted before these particular negotiations are concluded.

Specifically, we are opposed to Singapore's last reported request for U.S. duty rates on certain listed chemicals to go to zero immediately upon implementation of the an agreement. Some chemicals on the Singapore request list must instead be <u>phased</u> down to zero.

As noted above, we are also very concerned that the ***rules of origin*** in the Jordan FTA are inadequate as a model for a FTA with Singapore.

When negotiating Free Trade Agreements, the resulting agreements on rules of origin for chemicals are a vitally important aspect for the chemicals and allied sectors. U.S. negotiations of the North American Free Trade Agreement (NAFTA), with input from the chemical and allied industries, crafted a "tariff-shift" rule of origin and a "chemical reaction" rule of origin for our sectors guaranteeing that the vast majority of value-added in our sectors accrued to NAFTA parties. ISAC-3 requests to work with U.S. negotiations once again in a timely and ongoing basis in crafting the most appropriate rules of origin for our sectors.

Based on ISAC-3's experience, we propose that this agreement contain rules of origin for chemical products (Harmonized System Chapters 28 through 40) 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 with the concept of "tariff-shift" as the test for determining whether there has been substantial transformation of a product that will confer origin. Where goods or a product 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 other specific processes should be applied. ISAC-3 vigorously recommends against a "value content" rule of origin because it is burdensome and inefficient.

ISAC-3 will remain very concerned until the text of the U. S. proposal on rules of origin is identical to, or very similar to, the NAFTA rules, and that these rules are accepted by Singapore.

7. There is a need to consider and address strong transshipment language in the U.S.-Singapore FTA.

Unlike Jordan, a land-locked desert kingdom in the Near East, Singapore is an island state that bestrides the busiest shipping lanes in the world. Moreover, it is situated in the midst of at least a dozen countries

that engage in active trade. The lure of tremendous savings in duty and quota charges is a powerful incentive to transship through Singapore. Monitoring and enforcement against transshipment should be an essential part of this FTA.

In conclusion, we look forward to future opportunities to be consulted and engage in interactive dialogue with USTR negotiators concerning the proposed U.S. - Singapore Free Trade Agreement prior to negotiations being concluded.

V. Advisory Committee Opinion on Agreement

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

1. Establishment of Free Trade Agreement and Definitions

No comment.

2. National Treatment and Market Access for Goods

Singapore has agreed to eliminate all tariffs on entry into force of this Agreement. Since there are no tariffs in Singapore in chapters 28 through 40, this is no surprise

It is noted that one of the provisions in the tariff section allows, upon request, either party to accelerate the elimination of customs duties as set out in their respective schedules. This would only occur if someone in Singapore wanted to eliminate a US duty since there is none in Singapore.

The United States agreed to staging as follows:

> Goods categorized as staging "A" shall be eliminated entirely upon entry of the agreement. Schedule "B" duties will be relieved in four equal annual stages. Schedule "C" duties will be removed in eight equal annual stages and "D" category shall be removed in ten equal annual stages, "E" category provides for materials that already duty free.

It is hard to render an opinion on the phase-out schedule of chemicals that has been agreed to since it is highly dependent on the particular products.

3. Rules of Origin

In general, the Rules of Origin in this Agreement are not an acceptable template for future Free Trade Agreements.

The rules in Article 3.8 on Fungible Goods and Materials are not clear enough to insure

that the applicable rules used by the EU (2002/C 49/04 published in the Official Journal on 22 February 2002) are intended to be included in the language that references "any inventory management method" recognized under GAAP. If so, the annual election of a method would not be necessary if the "Party" is using the EU method.

The Rule of Origin concerning 3808.30, .40, and .90 includes requirements that two or more active ingredients must be in a mixture and that domestic content of the active ingredients be no less than 40% of the total active ingredients. This rule is diluted from the rules in the NAFTA for 3808 and needs further refinement after consultation with the crop protection chemicals industry sector.

Early consultation indicates that the 40% figure should be higher to ensure reasonable domestic content for origin-conferring purposes.

The pigment industry is concerned that the rule for 3215, Inks, would allow producers of these products to meet the Rules of Origin literally without any domestic content. This needs to be addressed in future free trade agreements.

The crop protection chemicals industry sector is concerned about the dilution of Rules of Origin requirements in this Agreement as compared to those in NAFTA. While it may be too late to make changes in the Singapore FTA, we urge the USTR to consult with this industry sector before negotiations on the CAFTA and FTAA Rules of Origin are finalized.

We are not advocating the value and volume rules approach in NAFTA, but volume (weight percentage) when it is adequate and otherwise needed where "tariff shift" methodology is not adequate.

4. Customs Administration

No comment.

5. Textiles

No comment

6. Sanitary and Phytosanitary Measures/Technical Barriers to Trade

No comment.

7. Safeguards

No comment.

8. Cross Border Trade and Services

No comment.

9. Telecommunications

No comment

10. Financial Services

No comment

11. Temporary Entry

No comment.

12. Competition Policy

No comment

13. Government Procurement

The government procurement section of the Singapore Free Trade Agreement relies heavily on the WTO Agreement on government procurement. It continually refers back to this document. It has national treatment provisions with no apparent exceptions that should affect the chemical industry. It therefore appears to be satisfactory for the industry.

There are concerns on environmental grounds regarding the lack of an exception comparable to GATT Article XX (g), which provides deference to government measures related to the conservation of exhaustible natural resources and has been used by the United States in WTO jurisprudence to defend its environmental laws. This is a problematic gap that leaves open to challenge procurement standards based on important environmental concerns, including protection of endangered species.

14. Electronic Commerce

No comment

15. Investment

ISAC-3 notes that the pharmaceutical industry has significant investments in Singapore. Many U.S. companies have come to rely on the current investment regime, and their present situation must be taken into account in any liberalization.

Mr. Waskow has expressed a concern that the investment provisions, particularly concerning "minimum treatment" and expropriation, do not meet the Congressional mandate that foreign investors not receive greater substantive rights than those that are afforded to U.S. citizens under U.S. law. In his view, the Agreement does not include the critical principle that a governmental action, in order to constitute a "taking," must affect a 'parcel as a whole' and must be analyzed in terms of the action's permanent interference with a property in its entirety. The impact of these rules is a concern for public interest and environmental protection. Further, given that many businesses have operations primarily in the United States, the granting of greater rights to foreign investors may be of concern for those businesses**.**

Mr. Mannix disagrees with Mr. Waskow's characterization of the investment provisions,

particularly as to the issue of what is a "taking" under current U.S. case law. He believes that a "taking" can be temporary or partial. He believes, moreover, that concern for environmental quality would argue for a trade policy that respects private property rights and that encourages our trading partners to do so as well. Mr. Mannix believes that weak property rights, more than any other underlying cause, are responsible for the "tragedy of the commons" that manifests itself as environmental degradation around the world. Strong property rights are essential, not only for free trade, but also for sustainable environmental protection.

16. Intellectual Property

ISAC views negotiations of FTA's with individual partners as a useful mechanism for clarifying minimum international obligations found in the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and for building on those minimum standards. While the negotiation of an individual FTA provides the opportunity to deal with specific intellectual property concerns that US industry may have in the particular negotiating partner, the resultant level of intellectual property protection that it contains should not be viewed as setting any ceilings for the intellectual property chapters of future FTAs. Rather, each individual FTA should be viewed as setting a new baseline for future FTAs.

ISAC notes that the IP chapter of the Singapore FTA included new benefits for industry, including improvements in the areas of trademarks, patents and provisions relating to regulated products, particularly in the area of undisclosed information. Given Singapore's role as a regional biotechnology hub, it is appropriate that this FTA includes provisions that will encourage further biotech R&D and investment.

We have insufficient knowledge at this point in time to comment on the provision of this chapter concerning measures related to certain regulated products particularly to confidentiality of test data and trade secrets of 5-years for pharmaceuticals and 10 years for agricultural chemical products. We do note with concern that the 5 and 10-year rules seem to apply only to a "new chemical entity." We believe that it should also apply to information on existing chemical entities already submitted and thus be consistent with U.S. laws regarding this subject.

There are concerns on environmental grounds regarding the lack of exception comparable to Article 27.3 (b) of the WTO TRIPS Agreement results in a requirement that plants and animals be subject to the Agreement's patent regime. The Agreement thus does not provide sufficient flexibility concerning the patenting of animals and plants, including flexibility needed to address environmental concerns such as protection of biodiversity.

17. Labor

No comment

18. Environmental

Mr. Waskow notes that the Agreement recognizes the commercial and competitive implications of a country's failure to enforce effectively environmental laws. However, there are concerns about a lack of a citizen submission process similar to the one used in the NAFTA Agreement on Environment Cooperation. The citizen submission provides the opportunity for concerns about a government's failure to enforce effectively its environmental laws to be raised before a neutral body. The lack of such a process, and the simultaneous inclusion of an investor-state dispute mechanism in the investment chapter, creates a problematic imbalance in the Agreement.

Mr. Mannix notes that, with respect to the environment, the NAFTA procedures are not necessarily good models to emulate in future FTAs.

19. Transportation

No comment

20. Administration and Institutional Arrangements

No comment.

21. General Provisions

No comment.

VI. Membership of Committee

Chairman
Geoffrey Gamble, Esquire,
Chief Counsel, International and Trade
E.I. du Pont de Nemours & Company

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

2nd Vice Chairman
Robert E. Branand, Esquire,
Representative
National Paint & Coatings Association

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

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

Ms. Katherine M. Dutilh
Washington Representative
Milliken & Company

Mr. Donald E. Ellison
Representative of SACMA
Rolling Valley Professional Center

Mr. Phillip G. Ellsworth
Executive Director, International Public Affairs
Pfizer Service Center

Ms. Mildred W. Haynes
Manager, Government Relations
3M Company

Ms. Shannon S. Herzfeld
Senior Vice President
PhRMA

Ms. Nancy R. Levenson
Director, Federal Government Relations
S.C. Johnson & Son, Inc.

Mr. Brian Mannix
Senior Research Fellow
Mercatus Center, George Mason University

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

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

Mr. John C. O'Connor
Senior Customs Associate
Eli Lilly & Company

Dr. George L. Rolofoson
Vice President, Government Affairs
Crop Life America

Mr. Louis G. Santucci
Director, Trade Regulation & Legislation
Cosmetic, Toiletry & Fragrance Assoc.

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

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

Mr. Max Turnipseed
Representative
The Dow Chemical Company

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

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

Mr. David Waskow
Trade & Investment Policy Coordinator
Friends of the Earth

Ms. L. Ann Wilson
Vice President, Government Affairs
Rubber Manufactures Association

Government:

Mr. Michael Kelly
Designated Federal Officer
Department of Commerce

Ms. Barbara Norton
Liaison
United States Trade Representative Office