

March 11, 2004

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-Australia Free Trade Agreement, reflecting consensus advisory opinion on the proposed Agreement.

Sincerely,

A handwritten signature in black ink that reads "Donald M. Nelson". The signature is written in a cursive style with a large initial "D" and "N".

Donald M. Nelson
Chair, ISAC-4

The U.S.- Australia 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 US-Australia 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

Overall, ISAC-4 members endorse the U.S.- Australia FTA. 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.

ISAC-4 members have, however, long been supporters of comprehensive trade agreements, and, regrettably, the Australia FTA falls short. We are disappointed that the Australia FTA does not address sugar, one of the most protected of all commodities and fear that the agreement may set a precedent that will be harmful to the interests of the United States in future agreements. By excluding sugar, this agreement serves notice to all our trading partners that we lack the determination to liberalize our own markets and signals every future FTA partner that the principle of commodity exclusions is acceptable to the United States. In addition, it undermines U.S credibility in the Doha Development Agenda negotiations by signaling that the U.S. commitment to cut domestic support may

be limited to those commodity groups unable to mobilize sufficient political resistance.

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.- Australia 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

Except as noted above, ISAC-4 members endorse the U.S.- Australia 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 over 99% of U.S. manufactured goods exported to Australia will become duty-free upon entry into force. This is a particularly significant achievement since manufactured goods account for 93% of total U.S. goods exported to Australia.

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 commend negotiators for improving market access for processed foods, and the Committee is extremely pleased that the agreement incorporates explicit recognition that Bourbon and Tennessee Whiskey, which are the leading U.S. spirits exports, as products that may be produced only in the United States. As noted above, we are deeply disappointed that an important ingredient in the manufacture of processed food products was totally excluded from the agreement. We fear that this exclusion can become an undesirable precedent that will be used by other countries in future negotiations to exclude products of export interest to our committee. 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.- Australia FTA represents a major improvement in IP protection. In general, we applaud the application of the “first in time, first in right” principle to trademarks and geographical indications. 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 both US and Australian law for IP violations and requires the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them.

d. Investment – Many consumer goods firms compete by establishing operations close to the consumer. Under this FTA, US investors will enjoy, in most instances, the same rights as local investors to establish, acquire, and operate within Australia. However, unlike every US Bilateral Investment Treaty and all previously concluded FTAs, the provisions of the Chapter on Investment are not subject to enforcement via Investor-State dispute settlement. ISAC-4 members believe that, as a practical matter, this omission renders the Chapter’s provisions unenforceable. Net, regardless of the Agreement’s provisions, US investors in fact gain nothing beyond that contained in previously existing domestic law.

e. Customs Procedures – ISAC-4 member firms rely on efficient, predictable administration at the border. We strongly endorse the U.S.- Australia FTA’s specific obligations on customs procedures, as well as the transparency requirements. We welcome the fact that this FTA retains the ability of U.S. companies to avail themselves of duty drawback mechanisms. This ensures that duties paid for inputs on goods that are subsequently exported are reimbursed. This ensures more competitive end products, which benefits both U.S. manufacturers and U.S. consumers. We also endorse the continuation of the duty drawback programs. 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 securing 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.

g. Services- The agreement affords substantial access to a number of services, subject to only a few exceptions.

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
Russell 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.
Joseph McGuire, Association of Home Appliance Manufacturers
Scott Miller, The Procter & Gamble Company
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
Deborah Wiley, John Wiley and Sons, Inc.

