

March 08, 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, we are pleased to transmit the report of the Industry Functional Advisory Committee on Electronic Commerce (IFAC-4) on the U.S.-Australia Free Trade Agreement, which reflects consensus on the proposed Agreement.

Sincerely,

Timothy J. Sheehy
Chair, Industry Functional Advisory Committee on
Electronic Commerce

Report of the
Industry Functional Advisory Committee on Electronic Commerce (IFAC-4)
March 2004

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IFAC-4

Industry Functional Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S.-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, the IFAC-4 hereby submits the following report.

II. Executive Summary of Committee Report

The IFAC-4 views the electronic commerce provisions of the U.S. Australia Free Trade Agreement as consistent with the negotiating objectives the committee has established for bi-lateral trade agreements, as well as the e-commerce negotiations in the WTO. IFAC-4 applauds USTR's establishment of the concept of digital products in terms of trade. Our assessment of the e-commerce provisions in the Agreement indicates that they meet our negotiating objectives and addresses particular concerns we have shared with USTR. IFAC-4 believes the e-commerce provisions promote the economic interests of the United States and provide equity and reciprocity for electronic commerce firms.

III. Brief Description of the Mandate of IFAC-4

IFAC-4 members provide advice on trade policy matters on a range of issues, including: electronic commerce negotiating priorities, data privacy, taxation, standards, consumer protection, authentication, and security and content. The Committee seeks to avoid the creation

of e-commerce trade barriers that would undercut the flexibility and seamlessness of this medium.

The Department of Commerce and the USTR rely on IFAC-4 for informed, immediate and regular advice to address trade issues effectively and to identify new and emerging concerns. IFAC-4's recommendations are used to develop U.S. Government positions and priorities on electronic commerce for discussions in bilateral, regional and multilateral forums, including the World Trade Organization (WTO), the Free Trade Area of the Americas (FTAA), the Organization for Economic Cooperation and Development (OECD), the Asia-Pacific Economic Cooperation forum (APEC), and the Trans-Atlantic Economic Partnership (TEP)¹.

IV. **Negotiating Objectives and Priorities of IFAC-4**

Given the rapidly changing nature of electronic commerce, the IFAC-4 believes U.S. negotiators should focus on adoption of broad electronic commerce objectives or "principles." Such principles have been widely discussed within industry and enjoy broad consensus. These principles include:

1. Current WTO obligations, rules, disciplines and commitments, namely the GATT, GATS and TRIPS agreements, apply to e-commerce.
2. Electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and that their classification ensures the most liberal treatment possible.
3. Governments should refrain from enacting trade-related measures that impede e-commerce.
4. Where legitimate policy objectives require domestic regulations that affect e-commerce, such regulations should be least trade restrictive, nondiscriminatory, transparent, and promote an open market environment.
5. The WTO moratorium on customs duties on electronic transmissions should be made permanent.

¹ The Industry Functional Advisory Committee on Electronic Commerce for Trade Policy Matters (IFAC-4) was established August 17, 1999, and extended on March 17, 2000, and March 17, 2002, by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) pursuant to the authority delegated under Executive Order 11846 of March 27, 1975, as an advisory committee established under the Subsection 135(c)(2) of the Trade Act of 1974 (Public Law 93-618), as amended by Section 1103 of the Trade Agreements Act of 1979 (Public Law 96-39), and Section 1631 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418, 102 Stat. 1107(1988)).

In establishing IFAC-4, the Secretary and the USTR consulted with interested private organizations and took into account the factors set forth in Subsection 135(c)(2)(B) of the Trade Act of 1974. In accordance with the provisions of the Trade Act of 1974, as amended, and the Federal Advisory Committee Act, 5 U.S.C. App.2, and 41 CFR Subpart 101-6.1001, Federal Advisory Committee Management Rule, IFAC-4 was chartered.

In addition to these objectives and priorities IFAC 4 is concerned with:

6. classification of digital products
7. trade commitments in services necessary to the conduct of electronic commerce transactions
8. expanding the signatories to the Information Technology Agreement
9. structure and scope of the WTO work program on electronic commerce
10. data privacy and security issues that impact electronic commerce

Most of these priorities are reflected in the Agreement.

V. Advisory Committee Opinion on Agreement

E-commerce Chapter

The U.S.-Australia Free Trade Agreement contains an electronic commerce chapter, which essentially continues the concept of "digital products" in terms of trade as defined in previous agreements. The chapter affirms the importance of avoiding unnecessary e-commerce barriers and the applicability of WTO rules. The chapter prevents the application of customs duties on electronically delivered digital products, assures the non-discriminatory treatment of digital products, addresses the valuation of physically delivered digital products, and provides commitments to cooperate on electronic commerce policy.

In the Australia Agreement, the parties agreed not to impose customs duties on digital products transmitted electronically. This provision is similar to the WTO Moratorium on Customs Duties on Electronic Transmissions. IFAC-4 seeks to make the Moratorium permanent and values the inclusion of the customs duties provision in the FTA.

In the Australia Agreement, the e-commerce chapter introduces the concept of "digital products", which reflects digital product development in the last two decades and the need for predictability in how digital products are treated in terms of trade. IFAC 4 appreciates that the digital product concept is without prejudice to the ongoing WTO classification debate, which is consistent with our e-commerce negotiating objectives.

Australia agreed to non-discriminatory treatment of "digital products" providing a broad national treatment and MFN non-discriminatory provision. This is a step forward in securing liberal trade treatment of digital products. IFAC-4 appreciates the importance of this provision and believes it is consistent with our objective to ensure the most liberal treatment possible of electronically delivered goods and services.

With respect to the physical delivery of digital products, Australia agreed to apply customs

duties on the basis of the value of the carrier medium. Presently countries use different methods to apply customs duties. IFAC-4 prefers valuation on the basis of the physical medium and applauds the inclusion of this provision in the Agreement.

With respect to the ongoing WTO Electronic Commerce Work Program, which is focused primarily on the classification debate of electronically delivered services and goods, IFAC 4 believes the e-commerce provisions in the Australia Agreement will spur debate. The U.S. has developed a method for treating digital products in terms of trade which should advance discussions in the WTO in the long-term.

VI. **Membership of Committee**

Mr. Timothy Sheehy (Chairman of IFAC-4)	IBM Corporation
Dr. George W. Phillips (Second Vice-Chair of IFAC-4)	Union Carbide, Inc.
Mr. Stewart Baker	U.S.I.S.P.A
Ms. Anne Marie Banner	Microsoft Corporation
Ms. Carolyn L. Brehm	Proctor & Gamble
Mr. Mark Chandler	Cisco Systems, Inc.
Ms. Susan D. Chapman	General Motors Corporation
Mr. Tod H. Cohen	eBay, Inc.
Ms. Barbara A. Dooley	Barbara A. Dooley & Associates
Mr. Daniel Driscoll	Caterpillar Incorporated
Ms. Loretta Dunn	The Boeing Company
Mr. John Goyer	Coalition of Service Industries
Mr. Christopher J. Hirth	Intuit, Inc.
Ms. Tatiana Lannelongue	Saucini LLC
Mr. David M. Leifer	American Council on Life Insurance
Ms. Wendy Owens	AbleMedia LLC
Mr. Joel R. Platt	BGE, Ltd.
Ms. Lynn E. Schwenning	Alticor, Inc.
Ms. Tai C. Terry	AOL Time Warner, Inc.
Mr. Glenn Zagoren	Zagoren-Zozzora Corporation

VII. **Conclusion**

IFAC-4 believes the e-commerce provisions of the Australia Agreement are consistent with the negotiating objectives of the IFAC-4 and the commercial interests of U.S. companies. We applaud USTR's establishment of the concept of digital products in terms of trade and appreciate that IFAC-4 negotiating objectives and concerns have helped shape the Agreement.