

The U.S.-Chile Free Trade Agreement

Report of the Agricultural Technical Advisory Committee on Trade In Fruits and Vegetables

February 26, 2003

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Report of the Agricultural Technical Advisory Committee on Trade in Fruits and Vegetables to the President, the Congress, and the U.S. Trade Representative on the U.S.-Chile Free Trade Agreement

I. Purpose of the Committee Report

Section 2104(e) of the Trade Act of 2002 (Public Law 107-210) requires that advisory committees provide the President, the Congress and the U.S. Trade Representative 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 a trade agreement.

Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) 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 U.S. 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 following report is submitted on behalf of the ATAC on Trade in Fruits and Vegetables:

II. Executive Summary of Committee Report

The Committee is appreciative that our trade negotiators recognized the sensitivity of some of our U.S. specialty crops and provided a 12-year non-linear tariff phase-out period. However, representatives of a few highly import-sensitive crops are concerned with the eventual elimination of their tariffs. The Committee also is appreciative of immediate zero tariffs for some of the Committee's crops, especially tree nuts and deciduous tree fruits. However, the Committee believes the snapback provision included in the agreement will not be particularly helpful to our fruit and vegetable industry, and the Committee is greatly disappointed that U.S. negotiators did not resolve all of the sanitary and phytosanitary issues that are market access impediments. Overall, the fruit and vegetable agreement is far better for the Chilean specialty crop industry than it is the U.S. fruit and vegetable industry.

The direction of this and other free trade agreements the U.S. is entering into, in addition to the Doha Round, led some of the Committee=s membership to request no tariff reduction for certain sensitive crops in USHTS Chapters 7, 8, and 20.

III. Brief Description of the Mandate of the ATAC on Trade in Fruits and Vegetables

The ATAC on Trade in Fruits and Vegetables is chartered to advise, consult with, and make recommendations to the Secretary of Agriculture and the United States Trade Representative on matters that are of mutual concern to the United States and to its consumers, producers, processors, and traders of specialty crops in connection with the trade policy activities undertaken by the United States. The Committee provides advice and information regarding trade issues that affect both domestic and foreign production and trade of specialty crops. The Committee furnishes advisory opinions and reports and performs the functions that are appropriate or required by the Secretary and the Trade Representative or their designees.

In carrying out its functions, the Committee draws upon the technical competence and experience of its members and on its evaluation of any information which may be provided by the Department of Agriculture and the Office of the United States Trade Representative.

IV. Negotiating Objectives for Specialty Crops as set forth in the Trade Act of 2002

In the Trade Act of 2002, which provides trade promotion authority (TPA) to the President, the Congress provided specific direction to the Administration with regard to specialty crops. These provisions are the following:

Section 2102(b)(10)

The principal negotiating objective of the United States with respect to agriculture is to obtain competitive opportunities for United States exports of agricultural commodities in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in specialty crop, and value-added commodities by:

- (A) (ix) eliminating practices that adversely affect trade in perishable or cyclical products, and improve import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture;
- (x) Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order to develop an international consensus on the treatment of seasonal or perishable agricultural products in

investigations relating to dumping and safeguards and in any other relevant area.

V. Advisory Committee Opinion on Agreement

General:

Because of its limited population, limited per capita income and the small size of its economy and markets, Chile does not provide a large market for U.S. specialty crop exports. Almost all U.S. specialty crops are grown in Chile, and while these crops are, for the most part, partially counter-seasonal with those of Chile, this does not ensure that the U.S. will gain a sizeable market in Chile as a result of the U.S.-Chile FTA.

In looking at new FTAs which the Administration has proposed to date, the Committee does not believe they offer the increased market opportunities which our specialty crops need. While some, such as the Central America and Australia FTAs, may be positive for a select number of USHTS Chapter 7 and 8 products, they have limited potential at best. Thus, the Committee wishes to go on record as urging the Administration when considering which countries to enter into a free trade agreement with to consider the benefits to the U.S. specialty crop industry that could be provided as a result of that agreement.

Tariff Phase-Out:

In general, the ATAC members wanted immediate zero tariff market access to the Chilean markets for some crops, the longest phase-out of tariffs for sensitive U.S. specialty crops, and for the most sensitive specialty crops and processed fruit and vegetable products exemptions from tariff reduction. The negotiators provided a long-term phase out for the most sensitive crops, but failed to accept the advice of no tariff reduction on the very sensitive specialty crops and processed products.

Some members of the current Committee visited Chile in 1992 and filed a report at that time indicating that our USHTS Chapter 20 specialty crops were sensitive to Chilean imports and this continues to be the case.

Some members of the Committee support the phase-out periods provided in the agreement. Other members who represent highly sensitive products (e.g., canned fruit) had sought product exemptions and were disappointed that a twelve-year phase-out (with safeguards in some instances) was the best protection provided. Since the Chilean FTA has been described as a template for the Free Trade Area of the Americas (FTAA), members of the Committee who represent highly sensitive crops believe that these crops should have received a 15-year phase-out as was provided in the North American Free Trade Agreement (NAFTA). This more lengthy time period would help some of the

most sensitive industries adjust to changing trade conditions. The Committee members representing sensitive interests are seeking tariff exemptions in subsequent FTAs.

The Committee notes that the Chilean tariffs on tree nuts and deciduous tree fruits were reduced to zero immediately, which will provide market access for our U.S. tree nut and deciduous tree fruit industries. Lowering foreign tariffs on tree nuts and deciduous tree fruits to zero and hence harmonizing them with U.S. tariffs should be the goal for all of the various FTAs under consideration.

The Committee has reviewed the tariff-rate quota provisions of the agreement as it relates to specialty crops and supports the quantities provided.

Agricultural Safeguard:

In light of the snapback safeguard provided in the Canadian Free Trade Agreement, the Committee questions the benefit of the agricultural safeguard in this agreement. The specialty crop industry has previously experienced failure with the snapback provision in the U.S., while, unfortunately, the Canadian government has been able to make it useful for Canadian products.

U.S. specialty crop tariffs in general were very low (and in some cases zero) prior to the agreement. Therefore any snapback to the MFN rate, even if it can be affected timely, will provide limited assistance to U.S. specialty crops.

Dispute Settlement:

The Committee is particularly appreciative to our negotiators for the provision of the agreement, which provides that consultations between Chile and the U.S. on any problem of perishable products must begin within 15 days of a request from either country. The Committee urges the Administration to monitor closely all matters brought to dispute settlement to ensure that each request is promptly resolved.

Sanitary and Phytosanitary Measures

The Committee believes that many countries use phytosanitary barriers for exports of U.S. specialty crops are improperly as tools to prohibit market access. Thus, the Committee is disappointed that many of our phytosanitary problems were not addressed and no resolution reached. At the very least the Committee would have liked to see timetables set for detailed deliberation prior to conclusion of the agreement. We are especially disappointed because another purpose of visiting Chile in 1992 was to convince the U.S. and Chile that many of Chile's sanitary and phytosanitary barriers could not be supported by sound science.

If the U.S.-Chile FTA is to be a template for the FTAA and other FTAs, then the sanitary and phytosanitary (SPS) issues CANNOT be left for consideration down the road.⁶ These issues are too important to U.S. specialty crop market access. In fact, SPS issues are the principal limitations to U.S. specialty crop market access in numerous countries around the world. Our ATAC strongly recommends that U.S. negotiators solve these sanitary and phytosanitary problems before or during the negotiations to assure that the U.S. horticultural and tropical products industry is not denied free trade benefits and enjoys market access equal to that enjoyed with the trading partner(s) of any agreements.

The Committee notes that a Committee on Sanitary and Phytosanitary Issues will be established to address SPS problems and that working groups could be established under this umbrella organization to work on an ad-hoc basis and to establish specific time frames for completion of work. It is our hope that this will accelerate action in problem situations.

Finally, given the very limited size and potential of Chile's market for horticultural products, even if SPS issues are eventually resolved the mitigation measures agreed to may be so costly as to make access commercially unworkable. A phytosanitary mitigation program that is economical for producers when targeting a market the size of the U.S. may not be when put in place for a market the size of Chile. U.S. negotiators must recognize this factor and seek SPS agreements that are flexible enough to ensure phytosanitary mitigation while at the same time being commercially sound. Simply basing SPS agreements on sound science is not enough.

Technical Barriers to Trade

The Committee supports the creation of a Committee on Technical Barriers to Trade to address such issues as development and enforcement of standards, but is disappointed that direction was not provided to harmonize such standards between the countries to the extent possible.

Harmonization results in less cost to our industries and provides an enhancement to the free flow of trade.

Market Access

The Chilean consumer ability to purchase U.S. specialty crops is limited to less than one million Chilean consumers, and the real limits of market access will be consumer income. In the U.S., the federal program crops will reap the advantage of the negotiations because of grower and export subsidies. The great majority of U.S. specialty crop growers and shippers, except for tree nuts, will not realize an increase in market opportunities.

VI. Membership of Committee

Attached