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March 12, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20508

The Honorable Donald Evans  
Secretary  
Department of Commerce  
Washington, D.C. 20230

Dear Ambassador Zoellick and Secretary Evans:

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 Functional Advisory Committee on Customs Matters (IFAC 1) on the U.S.- Central American Free Trade Agreement (CAFTA), reflecting our consensus advisory opinion on the proposed Agreement.

We also wish to take this opportunity to thank those in your offices who have made the extra effort to keep our committee advised of developments. It is a pleasure to work with them on these customs issues because the results in the agreement demonstrate that our views and opinions were heard and taken into consideration.

Sincerely,

*James B. Clawson*

James B. Clawson  
Chair  
IFAC I

Enclosure

## **The U.S.-Central American Free Trade Agreement (CAFTA)**

**Report of the  
Industry Functional Advisory Committee on Customs Matters  
(IFAC 1)**

**March 2004**

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**Industry Functional Advisory Committee on Customs Matters (IFAC 1)**

**IFAC 1 Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. – Central American 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 trade 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, IFAC 1 hereby submits the following report.

**II. Executive Summary of Committee Report**

The Committee reviewed that part of the agreement that covers customs procedures or is otherwise required to be administered by the customs administrations of the parties. The Committee has not reviewed or commented on the other provisions in the agreement such as procurement, intellectual property or the agriculture and non-agriculture market access provisions. The Committee found the agreement to be fair and balanced. It provides many benefits to U.S. traders. As a result of these positive provisions, the Committee believes the agreement does provide equity and reciprocity in the customs functional area.

**III. Brief Description of the Mandate of IFAC 1**

The Industry Functional Advisory Committee (IFAC) on Customs Matters is concerned with all aspects of the process of importing and exporting goods through customs services, both domestic and foreign, and, with facilitation of the movement of such goods into and out of customs.

Industry representatives serving on the Customs IFAC provide advice on trade policy matters. Recently, members of the Customs IFAC have provided advice on a range of issues that included: the Trade Facilitation negotiations, the Agreement on Rules of Origin, the Import Licensing Agreement, as well as provided input to the Harmonized System Committee in the World Customs Organization (WCO). The committee also provided advice and recommendations on the operations and implementation of the Customs Valuation Agreement, and on the various Asia Pacific Economic Conference (APEC) customs recommendations.

Another area of emphasis for the committee was customs-related provisions and trade facilitation measures in the Transatlantic Business Dialogue (TABD), the Free Trade Agreement of the Americas (FTAA) and other free trade Agreements. Members of the Customs Committee also worked on WTO trade facilitation efforts and initiatives for the Doha round of trade negotiations, international trade data systems, and customs import security issues.

Industry representatives serving on the Industry Advisory Committee on Customs Matters have a voice in U.S. trade policy formulation through the Industry Consultations Program (ICP), which emerged from the 1974 Trade Act; to ensure that trade negotiators were coordinating with the private sector during trade negotiations. Based on the program's success, the ICP was renewed and expanded by the Trade Agreements Act of 1979 and the Trade and Competitiveness Act of 1988. The Department of Commerce, the Office of the United States Trade Representative (USTR), and other agencies work side-by-side with business leaders who serve as advisors to the U.S. Government. The Department of Commerce and USTR have joint responsibility for operating the Advisory Committees of the ICP.

#### **IV. Negotiating Objectives and Priorities of the Committee**

While a number of areas were negotiated as part of the U.S. – Central America Free Trade agreement that could have customs implications, there were several principal objectives of the Committee. The functions of the import process and how it is administered can make the agreement more successful for the benefit of traders or it can maintain non-tariff barriers to that trade. Another objective was to ensure that the rules and regulations are transparent and understandable to all traders including small and medium sized enterprises. We also wished to ensure that the agreement included a mechanism to keep those practices for import and export current with business “best practices.”

To provide advice on these objectives the Committee commented on the following issues:

A. Adherence by the Central American countries to existing customs conventions including:

- Harmonized Commodity Coding System (HS)
- WTO Agreement on Customs Valuation
- ATA Carnet
- Rules of Origin Agreement
- Drawback
- Pre-shipment Inspection Agreement

- Trade Facilitation
- B. Use of electronic import processing including use of electronic certification of origin.
- C. Reducing import clearance times.
- D. Adoption of clear and transparent rules of origin for determining eligibility of products for trade preference programs with an appeal process.
- E. Mechanisms to keep customs rules updated and current with best practices.

## V. **Advisory Committee Opinion on Agreement**

With experience from the Chile Free Trade Agreement and the work underway in the Doha Round and Free Trade Agreement for the Americas (FTAA), the customs sections of the CAFTA agreement substantially meet the Committee objectives. The U.S. negotiators met regularly with the Committee and solicited advice. They were responsive to the unsolicited advice from the Committee as well. From the results included in the Agreement, it is apparent that the negotiators accepted the Committee's advice and sought to achieve all of the objectives of the Committee. There are a couple of areas where the customs provisions did not meet the objectives such as requiring adherence to the Harmonized System Convention but on balance, the agreement provides equity and reciprocity in the customs areas.

The following is a more detailed description of some of the customs provisions that the Committee believes our negotiators were successful in reaching the objectives of the Committee.

### ▪ **General Provisions**

The Committee reviewed the customs section of the agreement and is pleased that so many of the current best practices have been included in those provisions. From the 48-hour release of goods standard to the need to make the rules and procedures available to the public, the lists of agreed to practices implements many of the international customs guidelines.

### ▪ **Definitions**

The definitions section provides clear and beneficial descriptions for the terms, Temporary Admission; Waste and scrap; Used goods; Recovered goods; and especially Remanufactured products.

### ▪ **Rules of Origin**

The Committee reviewed this section for process, not application of the rules. Determination of whether the application of the rules meets the objectives of specific sectors is left to each sector. For process, the origin sections provide for clear rules, ability to request advance rulings, and an avenue for appeal of that ruling. The general provisions also provide for *de minimis* non-originating components and a mechanism to update those rules as needed. Both provide for more efficient administration of the rules.

### ▪ **Certification of Origin**

The negotiators were able to obtain excellent provisions for the handling of certificates of origin. The certificates can be either electronic or written and do not have to be presented with the

goods. The certificate need only be available upon request. There is no stipulated format but only required data elements. This allows traders to use commercial documents. The provisions also allow for an importer to claim its preference up to one year after entry.

- **Customs Commodity Classification**

We recommended to the negotiators that all parties to the agreement adhere to and use the 2002 version of the World Customs Organization's (WCO) Harmonized Commodity Coding and Classification System (HS). While the CAFTA countries are using the HS they are not all parties to the Convention and are not using the 2002 version. Since the tariff rate market access provisions and much of the rules of origin are based upon common commodity classification it seems imperative to this Committee that all parties should be using the same system. That requirement was not included in the agreement.

- **Valuation**

As with the HS, the Committee believes that all parties should be obligated to and using the World Trade Organization (WTO) customs valuation system. With the establishment of the WTO, all member countries are obligated to apply and use the Valuation Code. That use should be transparent in application, include a binding ruling process, and envision the non-use (weaning) of pre-shipment inspection firms to certify value. That requirement was included in the agreement.

- **Dispute Resolution**

The Dispute Resolution procedure in the Agreement is well thought out and appears to be workable.

- **Trade Facilitation**

The Committee is pleased that the agreement includes trade facilitation provisions. Trade facilitation is mainly directed to procedures and associated information flows that control the international movement of goods and means of payment. With the assistance of improved information technologies, market forces have effected improvements in commercial procedures in recent years. However, obstacles continue to prevent and delay the efficient movement of goods and means of payment across borders, especially in the area of Customs' applications.

The Committee believes that trade facilitation is an absolutely essential ingredient of trade negotiations, and even more so in the light of the recent dramatic downturn in the global economy. Trade facilitation provisions should be focused on the simplification and harmonization of Customs procedures and practices. The process should be transparent and predictable. They should also require Parties to maintain appropriate measures to ensure efficient and fair Customs facilitation of goods that are imported and/or exported by express delivery services suppliers. The agreement's provisions do that. However, we are disappointed with the agreement's inclusion of a six-hour target for release of express shipments; we would urge that future agreements aim to cut that target at least in half.

▪ **Other Provisions**

Other provisions such as Drawback, Alteration and Repair, Remanufactured Goods, User Fees, Import Pricing and Licensing all have met the objectives of the Committee. The Committee is pleased with the decision to retain Duty Drawback for those who qualify.

**VI. Membership of Committee**

The Committee is fortunate to have both customs experts and representatives from the industry sector committees. The customs expert members are:

Ms. Marietta Bernot

Mr. James Clawson

Mr. Robert Leo, Esquire

Mr. John McGovern

Mr. Selig (Sandy) Merber, Esquire

Ms. Susan Presti

Mr. Lauren Rachlin, Esquire

Mr. Gilbert Lee Sandler, Esquire

Ms. Marjorie Shostak

Ms. Evelyn Suarez, Esquire

Mr. George Weise