

March 17 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Executive Office of the President
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 for Trade Policy Matters, Services (ISAC 13) on the U.S.-Central America Free Trade Agreement (CAFTA) reflecting consensus on the proposed Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Vastine". The signature is fluid and cursive, with the first letter of the first name being a large, stylized capital 'R'.

Robert Vastine
Chairman, ISAC 13

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

**Report of the
Industry Sector Advisory Committee on Services
for Trade Policy Matters (ISAC 13)**

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Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13)

Report to the President, the Congress and the United States Trade Representative on the U.S.-Central America Free Trade Agreement (CAFTA).

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 principal negotiating objectives set forth in the Trade Act of 2002. The report 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 Services for Trade Policy Matters (ISAC 13) hereby submits the following report.

II. Executive Summary of Committee Report

Key elements of the Agreement for services are the chapters on cross-border supply of services, investment, telecommunications, financial services, electronic commerce and transparency.

The five CAFTA countries have made very substantial commitments to liberalization in cross border trade, telecommunications, and financial services. These commitments are very much more ambitious than their GATS commitments. The CAFTA countries in general made only about 5% of all possible GATS commitments.

An important element of the Agreement is its chapter on Investment. Foreign direct investment is particularly important for trade in services because many services can only be “traded” by establishing a commercial presence (investing) in a foreign market. The chapter provides significant new opportunities for market access for investment (as discussed in a sector-by-sector manner below) and includes high standard protections for such investment, including investor-state arbitration, the free transfer of capital and protections related to expropriation and fair and equitable treatment. The Committee is disappointed, however, by the prospective only protections for breaches of certain investment agreements between an investor and the foreign government.

Another important element, new in a trade agreement, is the modification of dealer protection regimes.

Unlike bilateral trade agreements with Chile and Singapore, the Central America Free Trade Agreement does not include a provision for the temporary entry of key businesspersons. ISAC 13 regrets the absence of such a provision.

The commitments to regulatory transparency are very good. They are equivalent to the commitments of Chile and Singapore. Because these 5 countries have not heretofore enjoyed open regulatory processes, the agreement promises to bring substantial benefits in increased foreign direct investment and to strengthen the rule of law.

This Agreement also disciplines the use of dealer protection regimes, eliminating thereby significant barriers to distribution in the region.

The primary aim of U.S. Free Trade Agreements is to enlarge the market for US exports and to assist the development of trading partners through the creation of a better climate for U.S. investment. Because the CAFTA engages 5 US trading partners (and possibly 7 if the Dominican Republic and Panama join) it will have a stronger, synergistic effect. This is because, under the Agreement, each of these countries will extend to the others the same treatment they extend to the U.S. This should lead to more rapid development of the entire region to the benefit of all parties.

We hope that the Congress will approve this Agreement at the earliest possible opportunity.

III. Brief Description of the Mandate of the ISAC 13

ISAC 13 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to the services sector. To fulfill its mandate the ISAC meets at least monthly to review negotiations with U.S. trade officials and to advise as required by law.

ISAC 13 advises the Secretary of Commerce and the U.S. Trade Representative (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 services 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 there under.

In particular, ISAC 13 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce 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 services 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 the ISAC 13

ISAC 13's overall goal is to liberalize trade in the wide range of services provided by U.S. businesses, thereby promoting the expansion and health of the U.S. economy and, by extension, the economies of its trading partners.

US services industries provide about 87 million jobs, or 80% of total private sector employment. Most new jobs are services jobs. Between 1993 and 2003 services added 20.3 million new U.S. jobs.

According to the U.S. Bureau of Labor Statistics, 90% of all the 21.3 million new jobs to be created over the next 8 years will be services jobs.

ISAC 13's objective for this and other trade agreements is to achieve substantial additional market access for U.S. service industries. This means commitments to greater access to foreign markets for U.S. cross border trade, to investment abroad, and to the temporary movement of Americans who provide services.

With respect to the protection of U.S. investment abroad, ISAC 13's objective is to ensure high levels of protections for U.S. investors abroad, including protections related to national treatment and most-favored nation treatment, expropriation, fair and equitable treatment, full protection and security, the free transfer of capital, no performance requirements, investment agreements and investor-state dispute settlement.

ISAC 13 also sees an opportunity to advance U.S. policy objectives to liberalize foreign markets by focusing U.S. agencies' and private entities' efforts to provide technical assistance and trade-related capacity-building abroad, especially in developing countries and transitional economies. ISAC 13 believes that intensive technical assistance is imperative in many parts of the world if mutual trade liberalization goals are to be attained.

Finally, ISAC 13 appreciates the decision of the U.S. Government to pursue a *negative list* (or "top-down") approach and hopes this template is used when negotiating future bilateral and regional trade agreements.

V. Advisory Committee Opinion on Agreement

Overall, the Committee believes that the CAFTA meets the Committee's objective of achieving new and expanded trade and investment opportunities.

A. Crosscutting Provisions. The Committee's opinions on investment, temporary entry, and transparency follow:

Dealer Protection Regimes

For the first time ever in a trade agreement, this Agreement addresses restrictions on distribution in Central America created through restrictive dealer protection regimes. Such regimes have placed substantial burdens on the distribution of U.S. exports to the region by locking U.S. companies into inefficient, exclusive and effectively permanent relationships, oftentimes regardless of the performance of the local dealer. The Agreement addresses these issues in each of the countries where dealer distribution issues arose – Costa Rica, El Salvador, Guatemala and Honduras, with commitments differing depending on each country's current situation. Moving forward, all countries will allow U.S. exporters and their dealers freedom to contract the terms of their relationships, including duration of the contract, whether or not to provide for and how to calculate any indemnity for termination, and whether the relationship will be exclusive. Most of the countries undertook to allow the parties in future dealer distribution agreements to terminate such agreements at the end of the contract period or renewal period without indemnification. In most cases, the Agreement also provides for the calculation of actual damages based on general contract law in the case of an early termination of such an agreement (rather than a statutory formula that bore little relation to the commercial relationship), that exclusivity may only be required if written into the contract, and that arbitration should be a preferred method to resolve disputes. The Committee welcomes the innovative approach to dealer protection regimes adopted in this Agreement and believes that these provisions will substantially help promote more efficient and improved distribution for U.S. companies within the region.

Investment

The Agreement will help promote a secure and predictable legal framework for U.S. investors in Central America. Such provisions are of particular interest to service providers, whose services often require a local presence. The Committee notes that the United States already has a Bilateral Investment Treaty (BIT) in force with Honduras that will be suspended while the Agreement is in force. BITs were negotiated, but have not entered into force with El Salvador and Nicaragua.

With respect to ensuring access to U.S. investment, the Agreement makes substantial progress in reducing the barriers to such investment. Overall, the Agreement assures U.S. investors greater opportunities to establish, acquire and operate investments in each of the Central American countries in all sectors, except where a country has taken reservations, as discussed below in each of the sectoral areas. Such investors are to be accorded equal treatment with local investors and may not be subjected to special or discriminatory requirements for the use of local inputs or export obligations or to extend licenses to local companies. Rights to manage and direct such investments with personnel other than from the host country are also provided.

With respect to the protection of U.S. investment, the investment chapter of the Agreement generally contains the primary objectives sought by the Committee and included in the Trade Promotion Authority legislation, enacted as part of the Trade Act of 2002, including a broad definition of investment, the guarantee of prompt, adequate and effective compensation for expropriation, fair and equitable treatment, full protection and security, the free transfer of capital, no performance requirements, as well as the national treatment and most-favored nation provisions. Very importantly, the Agreement includes the investor-state dispute settlement mechanism that is vital to afford U.S. investors the opportunity to ensure that their investments are protected against arbitrary, discriminatory and unfair government actions. At the same time, the Agreement protects the legitimate exercise of each government's regulatory authority to protect "public welfare objectives, such as public health, safety, and the environment." The Agreement also seeks improved transparency in investor-state mechanism as sought by the Trade Act of 2002 and provides for the establishment of a negotiating group within three months to develop an appellate or other mechanism.

Nevertheless, the Committee is disappointed by several limitations in this agreement. First, the Agreement fails to provide protection for existing investment agreements, defined as agreements relating to natural resources or other assets controlled by the foreign government. Such investment agreements are related to many key sectors of U.S. investment activity abroad, including natural resources, construction, infrastructure development, and computer and telecommunications networks. On several occasions, the Committee has expressed its views that breaches of such investment agreements should be covered in FTAs, as well as new BITs, given the important economic and security benefits such agreements provide to the United States. Given the lack of any concrete concerns expressed by U.S. negotiators with respect to any existing investment agreements between the United States and Central American investors, the Committee fails to understand why this important protection was limited to prospective agreements only. This is particularly true given that the existing BIT with Honduras accords full protections to both existing and future investment agreements.

Second, the Agreement could allow governmental restrictions on financial services activities, including the transfer of capital, through the operation of a broad prudential carve-out for financial services measures taken by the host government. The procedure developed to review whether a measure properly falls within the prudential carve-out is extremely lengthy and onerous, allowing not only a government-to-government review, but also a separate dispute settlement proceedings if the two governments cannot agree that the measure taken properly fits within the prudential carve-out. This represents a limiting of Honduras' investment protections, since the existing BIT does not contain any prudential carve-out, although existing investors will have a 10 year period in which to choose whether to proceed under the U.S.-Honduran BIT or the Agreement.

Movement of Personnel

Unlike recent bilateral trade agreements, the Central America Free Trade Agreement does not include a provision for the temporary entry of key businesspersons. ISAC 13 is disappointed by the absence of such an important provision.

Skilled personnel are essential to world trade and investment. They are the means by which U.S. service companies provide services to their customers. Without the ability to move their personnel with speed and agility, American services businesses simply cannot fulfill their obligations to clients around the world. Thus, for a trade agreement to be commercially viable it should contain meaningful personnel mobility provisions.

As ISAC 13 has previously commented, U.S. service providers face complex, cumbersome and time-consuming requirements to obtain work permits and visas for their workers on short-term secondments and/or transfer to company facilities, projects or assignments in other countries. Increasingly, similar visa and other entry permit barriers face foreign employees and U.S. employers seeking temporary entry into this country for their employees and contract workers. Oftentimes, it can take months to obtain the necessary entry authorizations, thus seriously hampering a company's ability to perform the necessary work or internal training/orientation in a timely fashion. Situations such as these undermine the spirit and purpose of bilateral and multilateral trade agreements.

The Committee well understands that temporary entry provisions are not included in this Agreement because of Congressional concerns that the negotiations of temporary entry provisions in the Chile and Singapore Agreements had not been explicitly authorized in advance. It would seem appropriate, therefore, that the responsible committees of Congress develop guidelines for future bilateral and multilateral trade agreements so that USTR has the flexibility to negotiate temporary entry provisions for highly skilled individuals, senior corporate executives, professional personnel (accountants, architects, educators, lawyers, health care personnel, as examples) and others with unique skills and experience, such as those who operate oil well drilling equipment or film camera operators. Not only will temporary entry provisions benefit U.S. service providers, they will also help increase the employment of Americans working overseas and, in many instances, will help create employment for U.S.-based workers who support those working abroad.

As the global marketplace becomes increasingly interdependent and as modern economies become more dependent on services for their growth and prosperity, the need for American service enterprises to move their people across national borders grows. Seconding staff to establish and operate an overseas branch, subsidiary or affiliate may be necessary, even on a short-term basis, as sufficient local qualified workers with the necessary skills, experience, and corporate knowledge are often not readily available.

At a minimum, a bilateral trade agreement should include, in the case of business visitors, a binding for access to the most common short-term business activities and a prohibition of prior approval procedures, petitions, labor certification tests or numerical limitations. For intra-company transferees, neither party to the agreement should be subject to employment tests, labor certification or numerical limits. Particular attention should be given to the temporary entry of professionals.

The absence of a movement of personnel provision in this Agreement is a serious shortcoming. While the absence of such a provision is not sufficient to withhold approval of this Agreement, ISAC 13 and USTR should be mindful of temporary entry provisions as future agreements are negotiated. ISAC 13 looks forward to working with USTR, other USG departments and other appropriate stakeholders to fashion commercially meaningful and politically feasible temporary entry/personnel movement proposals.

Transparency

The provisions of the Agreement providing for transparency taken together guarantee a high standard of transparency in administrative, licensing, and adjudicatory proceedings. In sum they follow the very good precedents set in the Chile and Singapore FTAs, and should be embraced by all future agreements. They are consistent with current US law and practice.

Transparency in regulatory processes is absolutely essential for services industries, because they generally are the most highly regulated. A government's regulations governing financial services, energy services, and professional services, for example, can vitiate or nullify trade agreements that would otherwise provide full market access and national treatment.

The Agreement's transparency provisions are laid out in four parts of the Agreement: The initial chapter on transparency applies to all trade under the Agreement. In the services chapter are additional provisions applying to cross border services trade. The financial services chapter contains further provisions, as does the investment chapter.

The overarching provisions in the introductory chapter on transparency require the essentials: the designation of a contact point for inquiries, the requirement for prompt publication; the requirement that "to the extent possible" measures that each Party proposes to adopt are published in advance, and that persons of both Parties have a reasonable opportunity to comment. It should be noted that the proviso "to the extent possible" is consistent with US law. Further, the chapter provides that parties at interest to proceedings receive reasonable notice of such proceedings, and that they are allowed to present their case prior to final administrative actions. Each Party must establish independent tribunals or procedures for prompt review of administrative actions, and has the right to a decision based on evidence.

The provisions in the cross border services chapter provide further assurance that administrative decisions related to licensing are prompt and fair. This chapter also provides for the Parties to reach agreements mutually recognizing their qualifications and standards for professional practice.

The transparency provisions set out in the financial services chapter are consistent with the other transparency provisions in the Agreement but are tailored to the needs of this sector.

B. Sectoral Issues. The Committee's opinions on specific service sectors follow.

Accounting Services

The international accounting networks have been able to operate in the five countries covered by the Agreement in a reasonably satisfactory manner under contractual and other arrangements with local firms. The FTA preserves the ability to continue these arrangements and to establish similar new ones. With regard to cross-border trade in accounting services the results of the negotiations are mixed. Guatemala, Honduras and Nicaragua provide the opportunity for US accountants to obtain local qualifications and licenses, inasmuch as the US provides similar rights to Guatemalan, Honduran and Nicaraguan professionals. Costa Rica requires US nationals to have the status of a resident in Costa Rica, including a period of residency prior to being allowed to apply for the local qualification. El Salvador requires that Public Accountants be Salvadoran nationals. These continuing restrictions are especially onerous for small firms and single practitioners in the US who, for language, cultural affinity or other reasons, may wish to enter these markets on their own without a permanent local presence.

Advertising

Nicaragua, Honduras, and Guatemala have full commitments in this important sector. Costa Rica, however, retained fairly restrictive measures that reserve 70 percent of advertising played on domestic broadcast television and cinemas and imposes 100 percent import duties and additional fees on any imported commercials. Although El Salvador also retained local content quotas for commercials, an exception allowing foreign-made commercials for imported US goods and services substantially reduces the negative trade affect of this measure in El Salvador.

Architecture

The general provisions of Professional Services Annex 11.9, on the development of professional standards, temporary licensing and review, provide for equity and reciprocity in this sector.

The provision that application for a license will be based on a reciprocal agreement is not a barrier to US architects, and the further provision in some countries to allow practice in a host nation protocols or joint ventures will provide reasonable access to the Central American markets while promoting capacity building within the profession. El Salvador's residency requirement for inscription on the National Register of Architects, however, is a barrier to practice.

Asset Management Services

The CAFTA Agreement advances market access goals of the asset management industry in several respects in countries that may be of commercial interest in the future. Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua made no commitments in asset management in the 1997 GATS Financial Services Agreement and thus the CAFTA provides legal certainty that US asset management firms would be afforded national

treatment, non-discrimination and the right of establishment in these countries. In addition, the agreement includes a specific commitment to permit the cross-border provision of portfolio management services by asset managers of mutual funds. This important commitment allows a US firm to achieve economies of scale and use its global expertise in serving its clients in those countries. (The cross-border portfolio management commitments of El Salvador, Guatemala, and Nicaragua are forward-looking and take effect upon enactment of legislation authorizing mutual funds in those countries.) The financial services transparency commitments in the agreement also would benefit the asset management industry.

Audiovisual Services

None of the non-conforming measures in this sector represent onerous restrictions on US exports of filmed entertainment. Measures such as Costa Rica's local content quota on broadcast television and the flexibility to enter into new co-production agreements and provide subsidies for the promotion of cultural activities are targeted in scope, may be of local importance to stimulate local cultural expression, and do not significantly distort trade. Costa Rica, El Salvador and Nicaragua retained local equity requirements for broadcast licenses, not unlike the United States which also has such measures. Honduras requires local management of local news broadcasts, again, a measure which US industry does not view as unreasonable.

Computer and Related Services

The Agreement ensures full market access and national treatment for computer and related services by adopting a "negative list" approach and by taking no reservations in this important sector for the U.S. information technology industry. Between the Services Chapter and the Investment Chapter, the Agreement covers all modes of delivery, including electronic delivery, such as via the Internet. The negative list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The commitments for computer and related services are complemented by the commitments contained in the Electronic Commerce Chapter.

Education Services

Education services is affected in at least two major ways in this FTA: investment and the temporary entry of personnel.

Relative to investment in higher education institutions, the FTA remains restrictive not only related to the domestic qualifications of personnel but to majority ownership. Under such circumstances, institutions of higher education would have great difficulty being effective in these particular countries.

Further, education regrets that the FTA does not include provisions that will facilitate the temporary entry of expert, professional and managerial personnel. In combination with restrictions related to investment and professional qualifications, it is difficult to see how

higher education in Central America will benefit from this FTA.

Electronic Commerce

The U.S.- Central America Free Trade Agreement (CAFTA), as with other FTAs, includes important language on electronic commerce. The chapter maintains the high standards for trade in electronic commerce previously established under the Chile & Singapore FTAs. As with previous Agreements, the CAFTA establishes the concept of "digital products"; 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 addition, the CAFTA includes special provisions on transparency, not seen in previous agreements.

The Agreement also recognizes the applicability of the WTO trade rules to electronic commerce.

The Agreement defines "digital products" consistent with earlier Agreements and reflecting the increasing development of digital products over the last two decades and the need for predictability in how digital products are treated in trade agreements. The parties agreed to non-discriminatory treatment of "digital products". It provides a broad national treatment and MFN non-discriminatory provision.

With respect to the physical delivery of digital products, the CAFTA countries agree to apply customs duties on the basis of the value of the carrier medium. Presently many countries apply customs duties on content-based products using a wide variety of different standards, many of which are subjectively based on projected revenues from the sale of content-based products. U.S. industry has urged the USG to advance bilaterally, regionally and multilaterally a standard for customs valuation based on the value of the physical carrier medium for content-based products and therefore applauds the inclusion of this provision in the Agreement.

The parties also agreed to cooperate in numerous policy areas related to e-commerce.

Reservations: There are no e-commerce reservations, although we note that telecommunications barriers in all markets prevent important competition and growth that will foster trade in digital products in these markets.

Energy Services

We believe that the proposed FTA, in particular sections related to regulatory transparency and investment, provides a framework that can provide opportunities for U.S. energy services firms and facilitate the provision of energy services between the United States and Central America, except with respect to the lack of full investment protections discussed above.

We note that Costa Rica, while allowing private investment in power plants with installed capacity of 20 MW or less, has reserved the right to require substantial local ownership of

those smaller scale units. While not appearing to affect larger traditional power plants, this requirement, if implemented, could limit needed investment in renewable forms of energy and other smaller scale projects – something which Costa Rica, upon reflection, may not find to be in its best interest.

Finally, as noted previously we regret that the FTA does not include provisions that will facilitate the temporary entry of expert, professional and managerial personnel, particularly since certain energy services providers rely heavily on the ability to move highly skilled workers (e.g., oil drillers, construction personnel, etc.) from job site to job site with ease.

Engineering Services

The desire to negotiate a regional FTA with five Central American states is noble; however, the variations in the Annex I non-conforming measures across the five central American states makes the current CAFTA fall short of that goal. The observations are grouped in three categories:

-restrictions on providing services in the country as a firm (establishment and investment clauses): with a requirement for a local contractual association (e.g. El Salvador, Guatemala) or local ownership and employment minimums (e.g. El Salvador) or higher fees for US firms (e.g. Honduras) or the need to organize under local laws simply to do one project (e.g. Honduras) are all barriers. The partial mitigation of these restrictions in the context of ODA financed projects (e.g. El Salvador) is a very important step forward which we would enjoy seeing shared by the other four parties, then expanded in future years.

-inconsistent provisions and conditions on temporary provision of services: in some cases the absence of temporary licensing provisions (e.g. El Salvador, Guatemala) or a highly exclusionary needs test (e.g. Honduras).

-inconsistent reciprocity restrictions or exemptions: for example, the requirement for residency in order to qualify for licensing (e.g. El Salvador).

Express Delivery Services

The express delivery industry believes the CAFTA includes important provisions for the sector, including an appropriate definition of express delivery services (EDS). The Agreement recognizes express delivery services as a unique service sector and contains important commitments to maintain market access for the EDS industry.

The Agreement also includes important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers. And the Agreement includes significant language proscribing monopoly abuse by postal administrations when they compete in the supply of express delivery services. This provision should help limit unfair regulation and taxation of the express delivery services industry.

With respect to another key element for our industry - cross subsidization of express delivery services operations by postal authorities that use revenues and other privileges they derive from their government-granted monopoly rights to secure advantages in competitive express delivery operations - the CAFTA states that Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua each have "no intention" of directing revenues to their respective postal monopolies to benefit express delivery services. We are concerned that this language creates no enforceable commitment and would not fully cover the scope of cross subsidization that could occur. Notwithstanding this shortcoming, the U.S. express delivery industry believes the text of the Agreement provides very substantial advantages.

Financial Services (other than insurance and asset management)

The CAFTA countries' commitments in the financial services sector (other than insurance and asset management) contained in the proposed Central America Free Trade Agreement range from acceptable to excellent from the point of view of US industry. In particular, the provisions relating to branching (except in Costa Rica), pension management and regulatory transparency in the financial services are excellent. Moreover, we applaud Treasury for having secured from Costa Rica an agreement to support legislation to permit branching by foreign entities.

Healthcare Services

CAFTA breaks new ground concerning the temporary licensing of physicians and surgeons that will be helpful for US hospitals engaged in international medical care to gain market presence. The committee encourages negotiators to continue to refine temporary licensing language for inclusion in all future Free Trade Agreements.

Insurance

The insurance commitments contained in the financial services chapter of the agreement are comprehensive and generally provide good treatment for insurance. With some exceptions, commitments are similar among Nicaragua, Guatemala, El Salvador and Honduras, with differences mostly in terms of timing of commitments. While these countries already have fairly open insurance markets, in most cases these insurance commitments are significant improvements over current WTO obligations. Perhaps most significantly, Costa Rica's insurance sector, which is currently dominated by a monopoly, will be opened for the first time under this agreement, albeit slowly.

Under the financial service terms of the agreement, all major aspects of insurance are covered, including life, non-life, reinsurance, intermediation and services auxiliary to insurance. Similarly, key cross border insurance products and services are covered (marine, aviation and transport (MAT), reinsurance and intermediation), similar to those in Chile and Singapore FTAs.

As noted, Costa Rica will permit access to its insurance market for the first time, initially on a cross border basis upon entry into force, but will not permit establishment until 2008. It will permit branching operations at that time, but continue restrictions on third

party auto liability and workman's compensations until 2011. Honduras already permits branching operations. Branching restrictions in El Salvador are to be lifted within three years; those in Guatemala and Honduras will be eliminated within four years.

Commitments on transparency, objective and impartial application of domestic regulation and recognition of the importance of expedited availability of new products are also included.

Legal Services

We are pleased that no significant restriction is imposed in any of the five countries on the ability of U.S. lawyers to serve as foreign legal consultants or otherwise to provide advice and assistance respecting the law they are authorized to practice in the United States.

We note that Nicaragua and Honduras state reservations under the rubric of professional services that are phrased in general terms of reciprocity. We do not believe that these reservations, even if applicable, would inhibit American lawyers from acting as foreign legal consultants in those countries, since a large number of commercially significant states within the United States and the District of Columbia allow foreign lawyers to serve as foreign legal consultants in their respective jurisdictions.

As noted, the Agreement lacks temporary entry provisions. To date the absence of such provisions does not appear to have inhibited delivery of legal services in either country.

Telecommunications

The telecommunications chapter includes commitments that vary somewhat among the original four signatory countries (Honduras, El Salvador, Nicaragua, and Guatemala), with Costa Rica subsequently added in an annex. (See below for a summary of Costa Rica's commitments.)

Guatemala, Honduras and Nicaragua incur new international cost-oriented interconnection obligations for fixed traffic, effective no later than 1/1/07. El Salvador's existing cost-oriented obligations for both fixed and mobile continue.

Mobile services are excluded from obligations to institute cost-oriented interconnection, with the exception of El Salvador under its WTO commitments. This "carve-out" forfeits an opportunity for USTR to obtain cost-oriented mobile rates, which are generally far above cost in the CAFTA region. The effect of the provision is to protect incumbents and deny efficiencies to local users.

Honduras and Nicaragua make new commitments to provide "reasonable" access to and use of their telecommunications networks, a standard already in place for Guatemala and El Salvador under their WTO commitments.

Honduras and Nicaragua make new commitments for fixed services, including competitive safeguards, interconnection, universal service, licensing, independent

regulator, and allocation of scarce resources. "WTO-Plus" obligations are incurred for major suppliers with respect to resale, provisioning of leased circuits and collocation.

CAFTA members made new market access commitments, including cross-border obligations. Exclusivity for incumbents ends in 2005 for Nicaragua and Honduras

Costa Rica, in a separate annex, commits to allow telecommunications services providers, on a non-discriminatory basis, to supply direct private network services and Internet services no later than 1/1/06, and mobile wireless services no later than 1/1/07. Costa Rica also makes regulatory commitments, for effect 1/1/06, regarding universal service, an independent regulatory authority, transparency, allocation of scarce resources, interconnection, network access, information services, competition, submarine cable systems, and flexibility in the choice of technologies. While these commitments are somewhat modest, they represent significant progress for the Costa Rican market.

Vessel Repair

The ISAC welcomes the elimination of the 50 percent U.S. tariff on vessel repairs performed in the five Central American countries. This agreement will eliminate a significant burden on U.S. shipping companies that require repair work when servicing foreign markets.

VI. Membership of ISAC 13

A membership roster for the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13) is attached.

**Industry Sector Advisory Committee
For
Trade Policy Matters
Services (ISAC 13)
Member Roster**

Chairman

Mr. Robert Vastine
President
U.S. Coalition of Service Industries

Vice-Chairman

Ms. Elizabeth Benson
President
Energy Associates

Mr. Thomas Allegretti
President
American Waterways Operators

Ms. Emily Altman
Executive Director
Morgan Stanley

Fredric S. Berger, P.E.
Senior Vice President
The Louis Berger Group, Inc.

Mr. Stuart Brahs
Vice President, Federal Government Affairs
Principal Financial Group

Mr. Gordon Cloney
Chairman
Institute for International Insurance Development

Mr. Ken Crerar
President
The Council of Insurance Agents and Brokers

Ms. Ellen Delage
Director, International Relations
The American Institute of Architects

Mr. Donald Deline
Director, Government Affairs
Halliburton Company

Linda Menghetti Dempsey, Esq.
Vice President
Emergency Committee for American Trade

Paul Dickerson, Esq.
Haynes and Boone, LLP

Peter Ehrenhaft, Esq.
Member, Miller & Chevalier, Chartered
Representing the American Bar Association

Dr. Richard Feigel
Vice President Engineering
The Hartford Steam Boiler Inspection and Insurance Company

Mr. Peter Finnerty
President
American Ocean Enterprises, Inc.

Ms. Orit Frenkel
Senior Manager for International Trade and Investment
General Electric Company

Mr. Charles Heeter
Principal, International Government Relations
Deloitte and Touche LLP

Ms. Selina Jackson
Public Affairs Manager for International Trade
United Parcel Service

Mr. Leonard Karp
Executive Vice President and Chief Operating Officer
Philadelphia International Medicine

Ms. Laura Lane
Vice President, International Public Policy
Time Warner, Inc.

Dr. Marjorie Lenn
Executive Director
Center for Quality Assurance in International Education

Donald Morgan, Esq.
Cleary, Gottlieb, Steen and Hamilton

Mr. Kevin Mulvey
Director, International Government Affairs
American International Group, Inc.

Mr. Richard O'Brien
Executive Vice President
And Director of Government Relations
American Association of Advertising Agencies

Mary Podesta, Esq.
Senior Counsel
Investment Company Institute

Ms. Bonnie Richardson
Vice President, Trade and Federal Affairs
Motion Picture Association of America, Inc.
Geraldyn Ritter, Esq.
Assistant General Counsel
Pharmaceutical Research and Manufacturers Association

Ms. Laura Sallstrom
President
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