

July 14, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, NW
Washington, DC 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 Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) on the U.S.-Bahrain Free Trade Agreement. This report reflects the consensus opinion of ITAC 8 members on the proposed Agreement.

Sincerely,

Steven W. Stewart
Chair, ITAC 8

The U.S.-Bahrain Free Trade Agreement

Report of the
Industry Trade Advisory Committee for Information and
Communications Technologies, Services and Electronic
Commerce (ITAC 8)

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Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8)

Report to the President, the Congress and the United States Trade Representative on the U.S.-Bahrain 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 Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) hereby submits the following report.

II. Executive Summary of the Committee Report

The ITAC 8 views the provisions of the U.S.-Bahrain Free Trade Agreement that fall under the scope of the Industry Trade Advisory Committee as consistent with the negotiating objectives the committee has established for U.S. trade agreements. ITAC 8 believes the relevant provisions contained in this agreement promote the economic interests of the United States and provide equity and reciprocity for information and communications technology and services firms, and electronic commerce firms.

The telecommunications chapter includes several very important commitments that should foster a more open and liberalized telecommunications market in Bahrain, especially given that Bahrain has no WTO telecommunications commitments.

The U.S.-Bahrain Free Trade Agreement is supported by the Committee because it achieves services liberalization beyond that to which Bahrain is committed in the WTO General Agreement on Trade in Services (GATS). The U.S.-Bahrain Free Trade Agreement adopts a comprehensive negative list approach where all sectors are covered except where specific exceptions are made.

In the area of electronic commerce, ITAC 8 applauds the USTR's continued emphasis on the concept of digital products in terms of trade. Our assessment of the e-commerce provisions in the Agreements indicates that they meet our negotiating objectives.

The government procurement chapter reflects strong commitments that are similar to the provisions contained in the U.S.-Australia Free Trade Agreement. In many countries, particularly developing countries, government is a key purchaser of IT and communications products and services. Therefore, this Committee views the government procurement chapter as critically important to ensuring access to the important government procurement market in Bahrain.

In an area of growing concern for the U.S. high-tech industry, the Technical Barriers to Trade chapter of the FTA contains important provisions that emphasizes the importance of the WTO Agreement on Technical Barriers to Trade (TBT) and consistently reinforces the TBT provisions.

Intellectual Property protection is a critical objective, and the U.S.-Bahrain FTA contains standard intellectual property language that is consistent with previous agreements, raising the bar beyond the WTO TRIPs Agreement. We are generally supportive of its contents.

IT tariff elimination remains a top priority for this Committee. Bahrain joined the WTO Information Technology Agreement (ITA) prior to completing the FTA negotiations with the U.S. ITA membership is one of the U.S. government's key requirements for its trading partners when negotiating Free Trade Agreements. In addition, Bahrain committed to eliminate tariffs on almost all of the products on their tariff schedules, phasing out the remaining tariffs over a period of ten years.

In the important area of investment protections, the U.S.-Bahrain FTA does not contain investment-related provisions, because the U.S. and Bahrain have a very-high-standard BIT (Bilateral Investment Treaty) that entered into force in 2001. The BIT with Bahrain contains strong protections traditionally sought in investment agreements, and in some areas, it will provide U.S. investors overseas greater protections than more recent FTA agreements in key areas such as: 1) the BIT provides access to investor-state arbitration for existing and future investment agreements; 2) the BIT agreement does not contain a prudential carve-out that would allow the U.S. or foreign government to exempt from investor-to-state dispute settlement financial measures; and 3) the BIT also has taken a negative-list approach with only a few exceptions outside the purview of this Committee.

III. **Brief Description of the Mandate of the ITAC 8**

The Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) was established as part of a restructuring of the industry trade advisory committee system by the U.S. Department of Commerce and the United States Trade Representative (USTR). The restructuring was undertaken in order to better reflect today's U.S. economy and to better position industry to provide the private sector and civil society the opportunity to advise the Administration on trade issues and objectives. ITAC 8 combines the former ISAC 5 (Industry Sector Advisory Committee on Electronics and Instrumentation for Trade Policy Matters), IFAC 4 (Industry Functional Advisory Committee on Electronic Commerce), and the Computer and Related Services and Telecommunications Services areas of ISAC 13 (Industry Sector Advisory Committee on Services for Trade Policy Matters).

ITAC 8 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to information and communications technologies, services and electronic commerce. ITAC 8 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the U.S. Trade Representative regarding trade barriers and implementation of trade agreements.

IV. **Negotiating Objectives and Priorities of the ITAC 8**

ITAC 8 supports an ambitious trade agenda that addresses the following issues through all available trade negotiating forums, including multilateral (WTO), regional (e.g., FTA), plurilateral (e.g., CAFTA) and bilateral agreements. ITAC 8 also emphasizes the need for prompt implementation and effective enforcement of free trade obligations once agreements are concluded.

A. Goods Issues

1. Eliminate tariffs on all information technology products (hardware and software) and components, infrastructure equipment, medical equipment and scientific instruments.
 - Within the WTO, seek to gain new signatories to the Information Technology Agreement (ITA), expedite the phase out of tariffs under the ITA, and seek to expand the product coverage under the ITA.
2. Eliminate discriminatory taxes that create barriers to trade.

3. Support global, market-led, voluntary standards developed through an open and transparent process. Ensure that standards do not create unnecessary barriers to trade.
4. Reduce technical barriers to trade. Ensure that product testing, licensing and certification requirements, certificate of origin mandates and customs procedures are fair, transparent and streamlined. Eliminate those procedures that are duplicative or unnecessarily increase costs to users or delay the availability of products to market.
5. Where product regulations are deemed necessary they must be nondiscriminatory, based on sound, widely accepted scientific principles and available technical information and should not impede the effective functioning of the market. Consistent with existing WTO rules, regulations should be the least trade restrictive possible.

B. Services Issues

1. Increase the number of countries with obligations in telecommunication services and increase the range of services covered in country schedules. Ensure that telecommunication services are liberalized on a technology-neutral basis. Promote independent regulatory authorities and transparency in the regulatory process. Ensure nondiscriminatory access to and use of public telecommunication networks and services.
2. Obtain full market access and national treatment for computer and related services. Ensure that technologically evolving IT services, including those that are delivered electronically, continue to be covered by trade agreements and that barriers to these services do not develop.
3. Maximize the liberalization of all services that can be delivered electronically.

C. E-Commerce Issues

1. Electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form. Trade classification should ensure the most liberal treatment possible. Software and other digital products should be duty free.
2. Make permanent the WTO moratorium on customs duties on electronic transmissions.
3. Support a moratorium on Internet taxes.

4. Monitor other e-commerce issues to ensure that regulations in these areas do not create unnecessary barriers to trade. For example: data privacy, security, consumer protection, spam, digital signatures.

D. Intellectual Property Issues

1. Seek full implementation of existing TRIPs commitments and encourage ratification of WIPO Copyright Treaties.
2. Combat global software piracy and technology product counterfeiting.
3. Oppose Digital Rights Management legislation calling for government mandated technological standards to protect digital content. Promote the development and adoption of market-led best practices to protect intellectual property.
4. Oppose the application of levies on information technology products as a way to compensate copyright holders for copying.

E. Government Procurement Issues

1. Seek market access and transparency in government procurement.
 - Seek to expand the membership of the WTO Government Procurement Agreement.
 - Seek conclusion of a WTO Agreement on Transparency in Government Procurement.
2. Promote global use of electronic publication of procurement information, including notices of procurement opportunities.

F. Other Issues

1. Ensure that all countries comply with their obligations under their free trade agreements. Place a special emphasis on ensuring that China complies with its WTO obligations.
2. Enable global operations of U.S.-based companies by opening markets abroad and avoiding restrictions in the U.S. on worldwide sourcing.
3. Ensure U.S. trade laws are not weakened to the detriment of U.S. companies.
4. Ensure that privacy regulations do not create unnecessary barriers to trade.

V. Advisory Committee Opinion on Agreement

ITAC 8 reviewed the chapters on Market Access, Government Procurement, Technical Barriers to Trade, Telecommunications, Cross Border Trade in Services, and Intellectual Property. For these chapters, ITAC 8 believes the provisions of the agreement meet our objectives, promote the economic interests of the United States and provide equity and reciprocity for our sectors.

Telecommunications Chapter

The telecommunications chapter includes several very important commitments that should foster a more open and liberalized telecommunications market in Bahrain, especially given that Bahrain has no WTO telecom commitments. The chapter ensures that US providers will have access to and use of the public telecommunications network, including leased circuits, on reasonable and non-discriminatory terms and conditions. The chapter also includes strong “WTO-plus” obligations for all suppliers, including interconnection and dialing parity, and appropriately more rigorous commitments for major suppliers, including competitive safeguards, resale, and cost-oriented interconnection. Importantly, the chapter commits Bahrain to ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications services and that the regulatory body does not hold a financial interest or operating role in any supplier. The chapter provides for enforcement authority, guarantees recourse to regulatory bodies, and specifies an appellate process for resolution of domestic telecommunications disputes, all of which are important to providing effective market access for US providers.

The chapter includes two annexes that clarify the commitments for commercial mobile services and rural local exchange carriers in the United States. Two side letters are also included, one addressing Bahrain’s commitment to license additional commercial mobile service providers and another which lays out expectations that market liberalization will drive international interconnection rates from dominant operators to cost-oriented levels regardless of the fact that the Bahrain regulator does not have a specific mandate to regulate international services.

The agreement also includes two non-conforming measures for telecommunications. The first removes the Most Favored Nation requirement for aspects of satellite, DTH, DBS and digital audio services. The second is a “local presence” measure that requires service providers providing services in Bahrain to be incorporated in Bahrain, and that all the required infrastructure and personnel are substantially located in Bahrain.

Cross Border Trade in Services Chapter

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. 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.

Electronic Commerce Chapter

The U.S.-Bahrain 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 assures the non-discriminatory treatment of digital products and addresses the valuation of physically delivered digital products.

In the Bahrain FTA, 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. ITAC 8 seeks to make the Moratorium permanent and values the inclusion of the customs duties provision in the FTA.

The e-commerce chapter reflects digital product development in the last two decades and the need for predictability in how digital products are treated in terms of trade.

Bahrain 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. ITAC 8 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, Bahrain agreed to apply customs duties on the basis of the value of the carrier medium. Presently countries use different methods to apply customs duties. ITAC 8 prefers valuation on the basis of the physical medium and applauds the inclusion of this provision in the Agreement.

Compared with the U.S.-Australia FTA agreement, we note that the Bahrain agreement omits sections on Authentication and Digital Certificates and Online Consumer Protection. These sections are not required to meet ITAC 8’s objectives.

Government Procurement Chapter

The Government Procurement Chapter contains commitments that were modeled after the U.S.-Australia Free Trade Agreement and represent a higher level of commitments

than those contained in the U.S. Morocco FTA. The ITAC applauds the higher level of commitments contained in this Agreement.

Technical Barriers to Trade Chapter

Technical barriers are a new and evolving issue for the high technology community. Poorly contemplated standards, technology mandates, and pernicious industrial planning through standards mechanisms can prevent access to key markets for the U.S. high-technology sector. Increasingly, the IT sector is experiencing more complicated and difficult technical barriers worldwide, including unique encryption standards, data privacy barriers, software preference mandates, and chemical content requirements for IT products, among others. Strong enforcement of the WTO Agreement on Technical Barriers to Trade (TBT) and reinforcement of its principles through FTAs is important. Chapter 7, “Technical Barriers to Trade,” emphasizes the importance of the WTO TBT agreement and consistently reinforces the TBT provisions. In addition, the U.S.-Bahrain FTA is consistent with previously negotiated model TBT Chapters. The content of the Bahrain Agreement is nearly identical to that of Morocco. In addition, as with previous Agreements, the U.S.-Bahrain FTA establishes a “coordinator” dialogue to help facilitate cooperation in this area in the future. As with previous agreements, this should prove useful to eliminating technical barriers to trade in the technology area.

Intellectual Property Rights Chapter

The IT community represents a broad range of interests in the intellectual property area. All U.S. tech companies have greatly benefited from the increased levels of intellectual property protection worldwide, due in large part to the efforts of the U.S. Government and USTR in particular. The FTA standard intellectual property language is included in the U.S.-Bahrain FTA. Consistent with previous agreements, this raises the bar beyond the WTO TRIPs Agreement. We generally support its contents.

The side letter negotiated with Bahrain concerning ISP liability represents a consistent USTR position of balancing the interest of content holders and online service providers. Importantly, the balance negotiated under the DMCA remains intact. We hope to see this balance maintained in all USTR negotiations on the issue.

VI. Membership of the Committee

1. Mr. Steven W. Stewart (Chairman) IBM Corporation
2. Ms. B. Anne Craib (Vice-Chairman) Semiconductor Industry Association
3. Ms. Tatiana I. Lannelongue (Second Vice-Chairman) Saucini, LLC
4. Mr. Stewart A. Baker, Esq. Steptoe and Johnson, LLP
5. Mr. Jerald R. Beiter Lucent Technologies

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| 6. Mr. B. Timothy Bennett | AeA: American Electronics Association |
| 7. Mr. Arun K. Bhumitra | Arjay Telecommunications |
| 8. Mr. Mark F. Bohannon, Esq. | Software and Information Industry Association |
| 9. Ms. Carolyn L. Brehm | Proctor & Gamble |
| 10. Mr. Robert G. Britain | National Electrical Manufacturers Association |
| 11. Mr. Michael A. Brown | Quantum Corporation |
| 12. Ms. Melika D. Carroll | Intel Corporation |
| 13. Mr. Mark Chandler, Esq. | Cisco Systems, Inc. |
| 14. Ms. Susan D. Chapman | General Motors Corporation |
| 15. Mr. Calman J. Cohen | Emergency Committee for American Trade |
| 16. Mr. Tod H. Cohen, Esq. | eBay Inc. |
| 17. Ms. Barbara A. Dooley | Barbara A. Dooley & Associates |
| 18. Mr. Daniel T. Driscoll | Caterpillar Incorporated |
| 19. Ms. Loretta Dunn | The Boeing Company |
| 20. Ms. Holly A. Evans, Esq. | Advanced Micro Devices |
| 21. Mr. Keith E. Gottfried, Esq. | Borland Software Corporation |
| 22. Mr. John P. Goyer | Coalition of Service Industries |
| 23. Mr. Christopher G. Hankin | Sun Microsystems, Inc. |
| 24. Mr. Christopher J. Hirth | Intuit, Inc. |
| 25. Mr. F. Edward Jones | Kemet Electronics Corporation |
| 26. Mr. John D. Kania | IPC - Association Connecting Electronics Industries |
| 27. Mr. Kenneth H. Klein | Xerox Corporation |
| 28. Mr. David M. Leifer, Esq. | American Council of Life Insurers |
| 29. Ms. Wendy E. Owens | AbleMedia, LLC |
| 30. Mr. George Phillips, Ph.D. | Union Carbide, Inc. |
| 31. Mr. Edward M. Rozynski | Rozynski and Associates |
| 32. Ms. Laura S. Sallstrom | Sallstrom Consulting |
| 33. Mr. R. Wayne Sayer | R. Wayne Sayer and Associates, Inc. |
| 34. Mr. Douglas W. Schoenberger | AT&T |
| 35. Mr. Lynn E. Schwenning, Esq. | Alticor, Inc. |
| 36. Mr. Eric D. Schwerin, Esq. | Oldaker, Biden and Belair, LLP |
| 37. Ms. Susan C. Tuttle | IBM Corporation |
| 38. Mr. Lucas M. Ventino | Oracle Corporation |