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March 19, 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, I am pleased to transmit the report of the *Industry Sector Advisory Committee - Lumber and Wood Products for Trade Policy Matters (ISAC 10)* on the U.S.-Central American Free Trade Agreement (FTA), reflecting majority and minority opinion on the proposed Agreement.

Sincerely,



Lyn Withey
Chair
ISAC 10

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

**Report of the
Industry Sector Advisory Committee for Lumber and Wood Products
(ISAC-#10)**

March 19, 2004

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ISAC 10

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S.-Central American 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 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 Sector Advisory Committee - Lumber and Wood Products (ISAC 10) hereby submits the following report. The report reflects the views of the industry representatives on the committee. A minority view on the agreement from the environmental representative on the committee is included at the end of the report.

II. Executive Summary of Committee Report

ISAC-10 believes that the U.S.– Central American Free Trade Agreement (CAFTA), taken as a whole, is a positive development, which will advance the economic interests of the U. S. and the region. The agreement meets most of the negotiating goals and objectives set forth in past advice by this Advisory Committee. We recognize that this FTA represents a negotiated agreement between the U.S. and several countries in the developing stages of economic growth. Thus, we find it notable that the countries agreed to significant liberalization measures, including the ultimate elimination of tariffs on wood products, albeit over a longer staging period than we would prefer for many products in the sector. We encourage the governments to utilize the provision in the agreement allowing for acceleration of tariff cuts between parties. We hope and expect that as the benefits of tariff reductions begin to take effect, parties will move to accelerate reductions on products subject to longer phase outs. ISAC-10 urges that tariff staging, as presented in CAFTA, should not be used as a starting point, quick accession, or default position for negotiations in future trade agreements, particularly the FTAA. In the solid wood products sector, many developing nations are already world-class competitors to the United States and do not require lengthy periods of tariff protection to develop or protect their domestic industry.

Minority views submitted by the environmental representative on the ISAC are included at the end of the report.

III. Brief Description of the Mandate of the Industry Sector Advisory Committee (ISAC 10) on Lumber and Wood Products

The Industry Sector Advisory Committee (ISAC) on Lumber and Wood Products is comprised of environmental and industry representatives from the lumber and solid wood products sector that includes sawmills and planing mills, hardwood veneer and plywood, softwood veneer and plywood, reconstituted and engineered wood products, and certain treated wood products. Representatives serving on the Lumber and Wood Products ISAC provide advice on trade policy matters.

The Committee reports to the Secretary and the USTR, or their designees, through the Commerce Under Secretary for International Trade and the Assistant Secretary for Trade Development (the Assistant Secretary), and USTR's Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison (AUSTR).

IV. Negotiating Objectives and Priorities of the Industry Sector Advisory Committee (ISAC 10) on Lumber and Wood Products:

a. Global elimination of tariffs on all wood products remains the top priority trade objective of the U. S. wood products industry. With a sustainably managed fiber base, skilled workforce, efficient mills, and logistics infrastructure, this is a highly competitive industry in the global economy. However, the persistence of high tariffs, and particularly, tariff escalation, applied to our products has prevented realization of our competitive advantage. High tariffs abroad allow foreign competitors to develop a competitive industry while securing their domestic or regional market share, while low or non-existent tariffs in the U.S. in this sector allow competing products free entry in our own market. Tariff escalation, allowing raw or semi-processed materials free entry, while imposing higher tariffs on value-added products is particularly disadvantageous to our most competitive products. We have urged U.S. negotiators to seek immediate elimination of tariffs on all products in this sector, and where tariff reductions are phased in, to reduce higher level tariffs first and fastest to reduce the tariff escalation effect.

b. Other general trade objectives for the wood products industry include elimination of non-tariff barriers; elimination of capacity-building subsidies; support for monetary and trade policies that discourage currency manipulation for competitive trade advantage; rules of origin delineation providing for transformation at the four-digit level; mutual recognition and strong enforcement of trademark licenses; international harmonization and mutual recognition of product standards and accreditation procedures; and support for measures to ensure against reduced environmental standards for competitive advantage, particularly associated with illegal logging and trade in illegally harvested forest products.

V. Advisory Committee Opinion

The U.S. goal in the negotiation of every free trade agreement should be at the very least to build on an existing baseline of accomplishments. CAFTA generally builds on the requirements already agreed to in the WTO and provisions previously negotiated within the NAFTA, Jordan, Singapore and Chile Free Trade Agreements with respect to market access, IPR, and rules of origin. The CAFTA also includes provisions on conformity assessment procedures, which should ensure that U.S. certification agencies are recognized, thus facilitating acceptance of our products.

ISAC-10 notes that CAFTA is the first multi-lateral agreement completed with countries that are in the developing stages of economic growth. The fact that these countries have chosen to pursue increased levels of accountability in trade is encouraging. Also encouraging is that the agreement

provides for increased levels of accountability. ISAC-10 encourages the U.S. Government to continue this strong negotiating posture in future trade agreements.

While the achievement of trade liberalization and accountability in the agreement is positive, ISAC 10 is disappointed that, unlike the recent Australia, Chile and Singapore FTAs, the immediate elimination of tariffs on wood products was not achieved. It is positive that the CAFTA provides for ultimate tariff elimination, but the lengthy staging periods for many value added products is disappointing.

Market Access – The primary objective of ISAC 10, elimination of tariffs across the wood products in Chapter 44, will ultimately be achieved, but for many value added products, reductions will be phased in over five to ten years. These staging periods will significantly delay or diminish the benefits to be experienced by the U.S. wood products industry. In some instances, the U.S. value-added wood products (e.g. structural wood-based panels and engineered wood) will be required to wait ten years before realizing the desired zero tariff position. However, ISAC-10 compliments the U.S. negotiators on restricting the staging in this sector to no greater than ten years and not to one of the other schedules that included time periods as long as 20 years. We encourage governments to take advantage of the provision allowing for acceleration of tariff reductions between parties. We hope and expect that as the benefits of tariff reductions begin to take effect, parties will move to accelerate reductions on products subject to longer phase outs.

ISAC-10 strongly urges that the tariff staging, as presented in CAFTA, should not be used as a starting point, quick accession, or default position during negotiations in future trade agreements, particularly the FTAA. In the solid wood products sector, many developing countries are already world-class competitors to the United States. High tariffs imposed by these nations with competitive manufacturing bases allow them to continue to develop capacity while maintaining or securing additional domestic or regional market share. Immediate elimination of tariffs on all wood products remains a top priority objective for ISAC-10.

Rules of Origin - ISAC-10 is satisfied with the results of the negotiations on rules of origin, which provide for the recognition of the transformation of solid wood products at the four-digit level.

Intellectual Property Rights (IPR) – ISAC-10 generally supports the Chapter on intellectual property rights, specifically the negotiations on trademark and copyright protection. In particular, the U.S. wood products industry is pleased with the broad scope of protection that will be recognized for well-known marks in a manner similar to that negotiated in the Singapore and Chilean FTAs. However, this agreement does not have the U.S. industry preferred (Chile FTA) provision that protects the owners of well-known trademarks to prohibit or void marks that are identical or similar to the well-known mark.

ISAC-10 also supports the agreement by the CAFTA signatories to expand their TRIPS obligations and enforce civil damages in the areas of copyright and trademark piracy and counterfeiting. U.S. industry, however, has concerns regarding the discretionary nature of the application of statutory or actual damages by the judiciary system in each country and issues related to the destruction of counterfeit goods and the equipment used to manufacture them.

ISAC-10 urges the U.S. Government to monitor closely the agreed upon time frame for implementation of the protection and enforcement regulations agreed to independently by each country. ISAC-10 again is concerned with the long transition periods requested for implementation, generally 2-3 years. The benefit to U.S. industry will be achieved only through the

willingness of each government to regulate these new standards of performance. We need to ensure that these obligations are met in a timely manner.

Sanitary and Phytosanitary (SPS) Measures – The industry representatives of ISAC-10 support the Chapter on SPS and the establishment of an annual forum for the review of SPS issues between the respective countries. The environmental representative's views are presented in the Minority Opinion.

Technical Barriers to Trade (TBT) – ISAC-10 supports the Chapter on TBT, particularly with respect to transparency in standards development, participation by non-governmental bodies and mutual recognition or harmonization of conformity assessment bodies. The U.S. industry also supports the minimum 60-day response time period for responding to Standards Notifications and the stated ability to establish equivalency between National standards.

VI. Minority Opinion.

Chapter 17: Environment: Statutes or regulations “the primary purpose of which is managing the commercial harvest or exploitation of natural resources” are explicitly exempted from the definition of environmental law. Article 17.13(1). This potentially eliminates enforcement of many important laws and provisions governing resource management. The qualifying language that “the primary purpose of a particular statute or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part,” is insufficient to offset this significant exemption. Congress should establish that this qualification is intended to be interpreted broadly.

Congress should also establish a broad interpretation of the following ambiguous terms, which open to narrow, wrong, and subjective interpretations that could inappropriately limit submissions and prevent parties from asserting legitimate interests:

- Only persons with a “legally recognized interest” are ensured access to proceedings enforcing environmental laws (Article 17.3(3));
- The Secretariat will not consider submissions it unilaterally decides are aimed at “harassing” rather than “promoting enforcement.” Article 17.7(2)(d).
- The Secretariat may not advance a submission it unilaterally determines to be “frivolous.” Harm to the submitter must be alleged, potentially eliminating submissions based on harm to the environment or other interests (Article 17.7(4)(a)).

Improvements in CAFTA over the North American Agreement on Environmental Cooperation (NAAEC) to NAFTA, for example regarding factual records and their publication, are not extended to U.S. residents. Article 17.7(3) requires U.S. residents to file submissions on U.S. enforcement through NAAEC. Congress should seek equal treatment for U.S. residents under CAFTA.

The Secretariat should be granted authority to conduct factual investigations as under NAFTA, instead of being limited to existing and submitted evidence (Article 17.8(4)).

Exceptions: Congress should clarify that environmental exceptions incorporated from GATT and exceptions in specific chapters are mutually reinforcing, not subject to alternative interpretations, for example that they are mutually exclusive. Article 21.1 adopts GATT general exceptions for protecting human, animal, or plant life or health and conserving exhaustible natural resources. More targeted exceptions can be found in Annex 3.2 regarding export of various wood products and

coffee; Investment Articles 10.9(3)(c) and 10.11 regarding protection of human, animal or plant life or health and environmental concerns; and Investment Annex 10-C for public welfare.

Institutional Jurisdiction: Congress should assert that the Environmental Affairs Council (Article 17.5) has jurisdiction over issues with environmental impacts equivalent to other CAFTA committees and institutions. If measures that are not exclusively environmental but have environmental implications, such as non-tariff measures, technical measures or SPS regulations, are managed predominantly by a committee of narrow and limited priorities, such as the Committee on Technical Barriers to Trade (Article 7.8) or the Committee on Trade in Goods (Article 3.30), environmental considerations could be overlooked.

Chapter 5: Customs Administration and Trade Facilitation: Compliance with the provisions of Articles 5.3(d) and 5.4 to expedite customs procedures should be predicated on prevention of invasive species introductions and strengthen measures to prevent trade in endangered species and by-products.

Chapter 6: Sanitary and Phytosanitary (SPS) Measures: Wildlife and public health agencies should be required members of the SPS Committee (Annex 6.3).

Chapter 10: Investment: Congress should encourage a narrow interpretation of the definition of investment, the broadness of which could lead to expansive claims by investors with unanticipated environmental consequences. Congress should also encourage greater transparency and public participation in the poorly defined appellate process (Annex 10F).

VI. Membership of the Industry Sector Advisory Committee on Lumber and Wood Products (ISAC 10)

- 1) Lyn Withey - CHAIR
International Paper
- 2) Ernest Altman - VICE CHAIR
Hardwood Plywood & Veneer Association
- 3) Edward Elias
APA-The Engineered Wood Association
- 4) John Grunwald
Representing the Indiana Hardwood Lumberman's Association
- 5) Edward Heidt, Jr.
The Penrod Company
- 6) Jerry L. Hingle
Southern Forest Products Association
- 7) Paul Houghland, Jr.
National Hardwood Lumber Association
- 8) Michael Leahy, Esq.
Defenders of Wildlife

- 9) Paul E. McKay
PMG & Associates
- 10) Thomas Searles
American Lumber Standards Committee
- 11) James A. Taylor
Representing Tri-State Pole and Piling, Inc.
- 12) Robert Taylor
Weyerhaeuser
- 13) C. Richard Titus
Kitchen Cabinet Manufacturers Association