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February 27, 2003

The Honorable Robert B. Zoellick  
United States Trade Representative  
600 17<sup>th</sup> 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 on Capital Goods for Trade Policy Matters regarding the U.S.-Chile Free Trade Agreement, reflecting the consensus of the full Committee on the proposed Agreement.

ISAC 2 is very pleased and commends the negotiators on the front-loading of the decrease in tariffs in the U.S.-Chile Free Trade Agreement. ISAC 2 urges that the Administration take all steps possible to ensure Congressional approval of this Agreement. With the EU agreement taking effect this month, time is of the essence in the implementation of this Agreement. Any delay in passage will provide our foreign competitors with a significant strategic advantage.

We want to thank the Administration and the Office of the U.S. Trade Representative for all their hard work in negotiating the Agreement.

Sincerely yours,  
Industry Sector Advisory Committee on Capital Goods

David W. Danjczek  
Chair

**Executive Committee**

**Chairman**  
S. A. (Tony) Johnson, Chairman  
**Hidden Creek Industries**

**Vice Chairman**  
Markos I. Tambakeras, Chairman, President & CEO  
**Kennametal Inc.**

Thomas A. Dattilo, Chairman and President  
**Cooper Tire & Rubber Company**

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**SKF USA Inc.**

H. John Riley, Jr., Chairman and President  
**Cooper Industries, Inc.**

**THE U.S.-CHILE FREE TRADE AGREEMENT (FTA)**

**Report of the  
Industry Sector Advisory Committee on Capital Goods for Trade Policy Matters (ISAC 2)**

**February 2003**

February 27, 2003

**Industry Sector Advisory Committee on Capital Goods for Trade Policy Matters (ISAC 2)**

**Advisory Committee Report to the President, the Congress, and the United States Trade Representative on the U.S.-Chile Free Trade Agreement (FTA)**

**I. Purpose of the Committee Report**

The purpose of this report is to provide the consensus advice of the Industry Sector Advisory Committee on Capital Goods for Trade Policy Matters (ISAC 2) regarding the U.S.-Chile Free Trade Agreement.

**II. Executive Summary of Committee Report**

The U.S.-Chile Free Trade Agreement (FTA), as concluded between the two governments and shared with members of ISAC 2, provides for the elimination of tariff and non-tariff barriers to free trade between the United States and Chile in a manner that provides for equity and reciprocity within the sectoral area represented by the Committee: capital goods. ISAC 2 members agree that the U.S.-Chile FTA will increase the export opportunities for U.S. capital goods manufacturers, while fostering improved protection of U.S. intellectual property and market access for American capital goods in Chile. ISAC 2 is, however, disappointed and concerned about the concession to Chile's reservation on national treatment for much of its energy sector.

Key areas within the negotiated agreement of interest to ISAC 2 members include:

- Elimination of tariffs on products certified as meeting defined rules of origin;
- Market access for remanufactured goods;
- Removal of non-tariff barriers;
- Improved protection of intellectual property rights;
- Enhanced opportunities for Chile's implementation and adherence to GATT/WTO obligations in the areas of customs valuation, technical barriers to trade, and government procurement; and
- An opening up of the Chile energy sector to U.S. companies.

### **III. Brief Description of the Mandate of ISAC 2**

The mandate of the Committee is to advise the Secretary and the 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 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 thereunder. The Committee also 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 sector and functional advisory committees.

In particular, the Committee 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 products of the capital goods sector; maintains continuing liaison with the Industry Policy Advisory Committee (IPAC) for Trade Policy Matters, including, as necessary, sending a representative to IPAC meetings when the Committee's recommendations are considered; 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.

The current membership of ISAC 2 includes representatives of companies and trade associations representing U.S. manufacturers of a range of capital goods including oil field equipment, machine tools, industrial controls, construction equipment, mining machinery, bearings, electrical machinery and their components.

### **IV. Negotiating Objectives and Priorities of ISAC 2**

The negotiating objectives of ISAC 2 included:

- Progressive reduction toward full elimination, within a reasonable time frame, of all Chilean tariffs on products within the scope of ISAC 2;
- Establishment of appropriate preferential rules of origin for products eligible for such tariff reductions to ensure that the benefits of free trade accrue to the United States and Chile as parties to the FTA;
- Elimination of non-tariff measures, associated with capital goods products, that unnecessarily restrict trade of those products;
- Facilitation of temporary entry for business persons;

- Full adherence of Chile to GATT/WTO agreements and related obligations in the areas of customs valuation, technical barriers to trade, protection of intellectual property, and government procurement; and
- An opening up of Chile's energy sector to U.S. companies. The national treatment afforded Chile's energy sector could preclude foreign companies from participating in Chilean territorial seas energy development.

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

### Market Access - Industrial Goods

Negotiations to eliminate Chile's tariffs within a short period of time was the most important element of the U.S.-Chile FTA. Most capital goods exported to Chile from the United States either already receive zero tariffs or will receive duty free treatment immediately when the Agreement goes into effect. Chile tariff reductions for a small number of capital goods products will be staged in over periods. Tariff reductions for mechanical appliances for projecting dispersing or spraying liquids will be staged in over 4 years. A variety of material handling products including hoists, derricks, and cranes will have tariffs eliminated over an 8 year period.

ISAC 2 believes that overall its goals for this important area of the negotiations were met in the final agreement. The ISAC is very pleased with the immediate elimination of the remaining tariffs for most capital goods products.

### Market Access - Remanufactured Products

The Agreement provided a definition of remanufactured products as certain industrial products that are: a) entirely or partially comprised of materials that are recovered goods; b) have the same life expectancy and performance standards as new products; and c) enjoy the same factory warranty as such new products. It states that goods (except those specifically designated for automotive use) in Harmonized System headings or subheading 8702, 8703, 8704.21, 8704.31, 8704.32 and 8706 and 8707 can be reconsidered remanufactured goods.

Upon entry into force of the Agreement, Chile will eliminate the existing 50 percent surcharge on used goods.

These provisions satisfy the negotiating objectives of ISAC 2 with regard to remanufactured products. ISAC 2 believes the negotiators did an excellent job of meeting our concerns with regard to the definition of remanufactured goods and market access for remanufactured goods.

## Government Procurement

The Agreement states that the Parties recognize the importance of conducting government procurement in accordance with the fundamental principles of openness, transparency and due process. The objective is to provide comprehensive coverage of procurement markets by eliminating market access barriers to the supply of goods and services. Each Party shall accord to the goods and services of the other party treatment no less favorable than the most favorable treatment the party accords to its own goods, services and suppliers.

The Committee believes its objectives were fully satisfied in the final agreement.

## Customs Procedures/Rules of Origin

ISAC 2 representatives supported negotiation of the U.S.-Chile FTA as an interim step toward negotiation of the Free Trade Area of the Americas (FTAA). Some representatives of ISAC 2 have spent considerable time discussing proposed rules of origin within the U.S.-Chile FTA and the potential precedent that such rules might set for negotiation of the hemispheric-wide FTAA.

ISAC 2 members recommended that for some capital goods products the U.S.-Chile rules of origin should be based on stringent value-content measurements or tracing of value-content as included in the NAFTA, rather than having all industrial goods covered by a simple framework of change in Harmonized Tariff Schedule codes, without additional value-content measurements. ISAC 2 members are cognizant that the U.S.-Chile FTA rules of origin might be used as a model for the FTAA and therefore want the more stringent provisions.

The Rules of Origin negotiated for most capital goods involve a framework of change in Harmonized Tariff Schedule code. Rules of Origin for machine tool products, agricultural tractors and special purpose motor vehicles are more stringent, requiring more stringent value-content measurements. Most machine tool products contain a 65 percent regional value-content in addition to a switch in the Harmonized Tariff Schedule code. Special motor vehicles have a 30 percent regional value-content requirement.

ISAC 2 believes that the Agreement addresses the concerns of its members and therefore meets the Committee's negotiating objectives. The Committee believes that its advice regarding rules of origin in the U.S.-Chile FTA was followed. The resulting rules in the Agreement provide an appropriate balance between ensuring that FTA tariff reduction benefits accrue to U.S.- and Chile-origin products, while offering a reasonable cost of compliance to eligible producers seeking reduced tariffs and ultimately duty-free treatment as the Agreement is implemented.

## Technical Barriers to Trade

In the negotiated Agreement, Chile and the United States affirm their existing rights and obligations with respect to each other under the WTO Agreement on Technical Barriers to Trade (TBT Agreement). Provisions of the Chile-U.S. FTA are intended to increase and facilitate trade through the improvement of the implementation of the TBT Agreement and the elimination of unnecessary barriers to trade through bilateral cooperation.

These provisions satisfy the objectives of ISAC 2 with regard to technical barriers to trade.

### Temporary Entry

Under the negotiated Agreement, Chile and the United States agreed to grant temporary entry to a business person seeking to engage in a business activity without requiring that person to obtain an employment authorization. Both parties agreed to establish transparent criteria and procedures for temporary entry and the need to ensure border security.

The publication of the rules and regulations covering the temporary Entry for Business Persons is to take place no later than six months after the Agreement goes into effect.

ISAC members believe these provisions satisfy their objectives for the Agreement..

### Energy Sector

ISAC 2 expresses disappointment and concern about the concession to Chile's reservation on national treatment for much of its energy sector. Chile's claim that it has no offshore hydrocarbon resources, has not been verified and cannot be absent an active offshore exploration program, which has not yet been pursued. It is worth pointing out that the North Sea was considered bereft of commercial hydrocarbon resources until a U.S. company hit the first significant find there. Chile may offer similar potential, with consequent opportunities for U.S. oil and gas services companies. At a minimum, the concession on this issue could compromise other regional bilateral and multilateral agreements, to the detriment of U.S. energy business interests.

### Services

The Agreement states that each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

The Agreement provides that the Parties meet within a year to establish a work program to be undertaken to provide for temporary licensing in its territory of nationals of another party who are licensed as engineers in the territory of the other party.

These provisions meet the negotiating objectives of ISAC 2 members.

## Intellectual Property Rights (IPR)

The Agreement stipulates that before January 1, 2007, the Parties shall ratify or accede to the Patent Cooperation Treaty (1984).

The Agreement requires that before January 1, 2009, the Parties accede to the Trademark Law Treaty (Geneva 1994).

ISAC 2 members believe that these two provisions will adequately protect the IPR of U.S. capital goods manufacturers.

**All members of ISAC 2 reviewed this report and concluded that the U.S.-Chile Free Trade Agreement provides for the trade liberalization between the United States and Chile in a manner that provides for equity and reciprocity within the capital goods sectors represented by the Committee. ISAC 2 members agree that the U.S.-Chile FTA will increase export opportunities for U.S. capital goods manufacturers, while fostering improved protection of U.S. intellectual property and market access for all American capital goods in Chile.**

## **VI. Membership of Committee**

Members of ISAC 2 include:

- David Danjczek, Vice President, Administration, The Manufacturers Alliance/MAPI (Chairman)
- Brian Petty, Senior Vice President, Government Affairs, International Association of Drilling Contractors (Vice-Chairman)
- Galen Cobb, Director, Industry Relations, Halliburton Energy Services Group
- Gary Devlin, Director of Marketing - Surface Products, Cooper Cameron Corporation
- David Gridley, Executive Director, Marketing Services and Government Affairs, The Torrington Company
- Jon Jenson, Consultant, Precision Metalforming Association
- William Lane, Washington Director, Governmental Affairs, Caterpillar, Inc.
- Robert McDonald, Vice President, Government Affairs, Emerson Electric Company
- Patrick McGibbon, Vice President, Industry Marketing Services, Association for Manufacturing Technology
- John Meakem, Manager, International Trade, National Electrical Manufacturers Association
- Mark Stanza, Vice President, Government Affairs, York International Corporation
- Patrick Thompson, President, Trans-Magic Manufacturing Company, Inc.



- Franklin Vargo, Vice President, International Economic Affairs, National Association of Manufacturers
- Nick Yaksich, Vice President, Government Affairs, Association of Equipment Manufacturers