

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 Agricultural Technical Advisory Committee for Cotton, Peanuts, Planting Seeds and Tobacco on the Chile Free Trade Agreement, reflecting consensus advisory opinions on the proposed Agreement.

Sincerely,

Chair (or Designated/Acting Chair)  
(Committee)

**The U.S.-Chile Free Trade Agreement (FTA)**

**Report of the  
Agricultural Technical Advisory Committee for Cotton, Peanuts, Planting  
Seeds and Tobacco**

**February 2003**

**February 28, 2003**

**Cotton, Peanuts, Planting Seeds, and Tobacco Agricultural Technical Advisory Committee**

**Advisory Committee Report to the President, the Congress and the United States Trade Representative on United States – Chile 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 Cotton, Peanuts, Planting Seeds and Tobacco Advisory Committee hereby submits the following report.

**II. Executive Summary of Committee Report**

The members of the Cotton, Peanuts, Planting Seeds and Tobacco Advisory Committee have reviewed the United States – Chile Free Trade Agreement. This report reflects the opinion of the committee concerning cotton, peanuts, planting seeds and tobacco.

In general, the agreement appears to provide reciprocal levels of market access for both the United States and Chile. Specific issues are discussed in Section V of this report.

Among the more serious concerns expressed by the committee are:

- ◆ The U.S. peanut industry is in transition to a more open, market-oriented program. It would be preferable to that industry if tariff reductions were scheduled so that the majority of such reductions were taken during the later stages of implementation.
- ◆ Chile allows the production of biotech seed only if such production is exported. As the U.S. is not a signatory of the Biosafety Protocol, Chile and the U.S. do not have a compatible legal framework to address environmental and human safety issues relative to biotechnology. If the trade interests of the U.S. agricultural community are to be protected under the agreement, the U.S. and Chile should have at least a preliminary agreement that the WTO and Codex Alimentarius set standards regarding food safety and environmental issues ---not the Convention on Biodiversity.

The agreement contains provisions committing the countries to labor standards and rules adopted by the International Labor Organization, and obligates the countries to enforce their labor laws and their environmental laws.

The members of the committee note that current rules governing the confidentiality of free trade agreements make it difficult for the members of the committee to consult members of their industry concerning these agreements. The members of the committee urge the Administration to pursue changes in the rules governing secrecy of these agreements so that U.S. agriculture in general will have a fair opportunity to review actual agreement language well in advance of the agreement being concluded or sent to Congress for approval.

### **III. Brief Description of the Mandate of Cotton, Peanuts, Planting Seeds and Tobacco Agricultural Technical Advisory Committee**

The advisory committee is authorized by Sections 135(c)(1) and (2) of the Trade Act of 1974 (Pub. L. No. 93-618), as amended, and is intended to assure that representative elements of the private sector have an opportunity to make known their views to the U.S. Government on trade and trade policy matters. They provide a formal mechanism through which the U.S. Government may seek advice and information. The continuance of the committee is in the public interest in connection with the work of the U.S. Department of Agriculture (USDA) and the Office of the U.S. Trade Representative. There are no other agencies or existing advisory committees which could supply this private sector input.

### **IV. Negotiating Objectives and Priorities of (Committee)**

The Cotton, Peanuts, Planting Seeds and Tobacco Advisory Committee agrees with the general negotiating objectives set out in the Trade Act of 2002 concerning trade agreements as follows:

- ◆ to obtain more open, equitable, and reciprocal market access;
- ◆ to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade;
- ◆ to further strengthen the system of international trading disciplines and procedures, including dispute settlement;
- ◆ to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;
- ◆ to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;
- ◆ to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as defined in section 2113(6)) and an understanding of the relationship between trade and worker rights;
- ◆ to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;

- ◆ to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses; and
- ◆ to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

The Cotton, Peanuts, Planting Seeds and Tobacco Advisory Committee agrees with the general negotiating objectives set out in the Trade Act of 2002 concerning agriculture, including obtaining competitive opportunities for United States exports of agricultural commodities in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and achieving fairer and more open conditions of trade in bulk, specialty crop, and value-added commodities.

The committee members urge the United States to work to limit and abolish unfair or trade-distorting activities of state trading enterprises and other administrative mechanisms, unjustified trade restrictions or commercial requirements, such as labeling, that affect new technologies, including biotechnology; unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements; and other unjustified technical barriers to trade.

In addition, members of the Cotton, Peanuts, Planting Seeds and Tobacco Advisory Committee also support negotiating objectives concerning intellectual property rights as embodied in the Trade Act of 2002, including –

- ◆ the promotion of adequate and effective protection of intellectual property rights, including through ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights, particularly with respect to meeting enforcement obligations under that agreement; and ensuring that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law;
- ◆ providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;
- ◆ preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;
- ◆ ensuring that standards of protection and enforcement keep pace with technological developments; and
- ◆ providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms;
- ◆ fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection; and
- ◆ respect for the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001.

The cotton members of the committee also note the importance of textile negotiating objectives as set out in the Trade Act of 2002, which are to obtain competitive opportunities for United States exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in textiles and apparel.

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

### **Tobacco provisions**

The Chilean Trade Agreement is a fair and very comprehensive trade agreement that adequately covers all tariff categories relative to tobacco trade between the United States and Chile.

### **Peanut provisions**

Chile has no significant peanut production. The rules of origin included in the agreement would limit imports to the U.S. to Chilean produced peanuts and will not allow Chile to establish a cottage industry of processing peanuts as was done with Canada under previous trade agreements.

Tariffs applicable to peanuts are phased out under the longest period of time provided for in the agreement. However, it would be preferable if tariff reductions for peanuts were not done in a straight line fashion but rather scheduled so that the majority of the tariff reductions are taken in the later years.

The U.S. peanut industry is in transition with a new program applicable to peanuts included in the 2002 farm bill. That program will make the U.S. peanut producers more sensitive to world and domestic market forces, but it will take farmers and the entire peanut industry some time to make this transition fully.

### **Cotton provisions**

The Chile agreement appears to provide for equity and reciprocity in trade in cotton and cotton products between Chile and the United States. With respect to cotton fiber imports into the United States, the agreement provides for the immediate elimination of import duties on in-quota cotton fiber, with duties applicable to imports outside the WTO-negotiated tariff rate quota to be phased out over an extended length of time. All duties and quotas applicable to cotton fiber exports to Chile appear to be eliminated immediately.

Members of the cotton industry cannot evaluate any free trade agreement without consideration of the provisions of the agreement that affect trade in cotton textiles. The Chile agreement provides for the immediate elimination of import duties on textile and apparel products and immediately ends non-tariff trade barriers between the two countries. The agreement also contains NAFTA-like rules of origin with respect to trade in cotton textiles (primarily a yarn-forward rule of origin for textiles and apparel and a fiber-forward rule of origin for cotton yarn) which ensures that the benefits of the trade preferences contained in the agreement do not go to non-participating countries. Unfortunately, the agreement also includes tariff preference levels for some textile trade – an unnecessary exception to the otherwise workable rules of origin.

Customs enforcement provisions in the U.S. / Chile free trade agreement appear to be workable and effective. The cotton members support the emphasis on cooperation for enforcement purposes contained in the Chile agreement, as well as the strong verification provisions. Overall, however, the Customs enforcement provisions in the Chile agreement are not as strong as those

in the Singapore agreement. In general, the cotton members of the Agricultural Technical Advisory Committee are optimistic that the Chile FTA will increase consumption of U.S. cotton and cotton products.

### **Planting Seed provisions**

Overall, the proposed trade agreement does address the major issues impacting U.S. seed industry trade and investment. Of primary interest to the seed industry are the provisions addressing Intellectual Property Rights, Sanitary and Phytosanitary Issues, Investment, Environment, as well as Market Access. Following are specific comments on sections contained in the U.S.-Chile Free Trade Agreement:

*Intellectual Property Rights* - This section does address all relevant aspects of, references to, and compliance with appropriate international treaties (e.g., UPOV, WIPO, patent laws etc.) that are necessary for the protection of the seed industry's intellectual property rights in Chile. More importantly, there is emphasis on the issue of IPR enforcement which is a significant problem within Latin America. Given the above, however, the agreement does not specify a mandatory level of human and funding resources to be dedicated to IPR enforcement; as contained in the "Environment" section. Experience in the region strongly supports the need for requisite funding level for improved IPR enforcement activities and legislative action in the promulgation of domestic IPR laws in Chile; especially since increased trade in products of intellectual property is a primary objective of this agreement. Furthermore, the seed industry would be interested in knowing Chile's position with regard to the issue of "research exemption" and patent law (i.e., U.S. patent law does not provide for a research exemption on patented materials.)

*Sanitary and Phytosanitary Issues* - The agreement does contain the correct condition that SPS issues will be handled according to the SPS provisions of the WTO. The seed industry fully supports the idea of science-based phytosanitary requirements for seed to ensure product quality and the environmental integrity of host country agricultural systems. However, experience has frequently demonstrated that free trade agreements that cite the WTO SPS standard often lead to an increase in unjustified and trade impeding phytosanitary regulation of agricultural products (e.g., China and the WTO, NAFTA and Mexico) due to the WTO's "loophole" provision that supports a country's sovereign right to determine its own level of risk. Therefore, the seed industry would strongly encourage that both parties specify its "base" phytosanitary requirements for seed prior to the signing and ratification of the Agreement. After the agreement is signed and ratified, both parties should be held tightly accountable in providing strong scientific justification for any addition to the base requirements.

*Environment* - This is a very problematic section for the seed industry, and possibly other agricultural commodity groups, as it has serious implications for the biotechnology issue. Chile allows for the production of biotech seed only if such production is exported and not distributed in the local markets. As the U.S. is not, and will not be a signatory of the Biosafety Protocol, Chile and the U.S. do not currently have a compatible international legal framework to address environmental and human safety issues relative to biotechnology. Consequently, as all sectors of the U.S. food chain are experiencing globally, biotech-related trade problems involving seed, agricultural commodities, and food will certainly surface between the two Parties. Therefore, if the trade interests of the U.S. agricultural community are to be protected under the agreement, the U.S. and Chile should have at least a preliminary agreement that the WTO and Codex Alimentarius set standards regarding food safety and environmental issues ---not the Convention

on Biodiversity. This is a serious issue that should not be addressed after the agreement is signed and ratified by both Parties.

Market Access - The U.S. seed industry has significant investments in Chile in the areas of plant breeding, out-of-season production, seed multiplication etc. Most likely, the U.S. seed industry will only maintain and increase in investments in Chile if seed is allowed to move freely between countries, without import duties. The contribution of the U.S. seed industry to the Chilean agricultural sector has been significant. Therefore, both the Chilean proposal for a 6% duty on seed imports as well as any U.S. counter proposal other than “free” is unacceptable. Seed is not commonly subject to import duties, as a continual influx of newer and improved genetic resources does benefit all countries. Clearly, the 6% duty proposed by Chile is an attempt to provide a degree of protection for its indigenous seed industry. This runs counter to the spirit of any free trade agreement.

Investment - As evident by the current level of investment by the U.S. seed industry, Chile’s investment laws are attractive to the seed industry. If the agreement does enhance Chile’s investment climate by making it more compatible with U.S. investment laws, the seed industry will be supportive of the investment terms of the agreement.

## **VI. Membership of Committee**

Ms. Jeannette Anderson	American Peanut Council	Alexandria, VA
Mr. Otto Bean, Jr.	Bean Farms	Gideon, MO
Mr. J. Thomas Bunn	Leaf Tobacco Exporters Assoc.	Raleigh, NC
Mr. Albert Calvani	Calvani Farms	Carlsbad, NM
Mr. Willie (Billy) Carter, Jr. (Chair)	Carter Farms	Scotland Neck, NC
Mr. Mark Condon (Chair)	American Seed Trade Assoc.	Alexandria, VA
Mr. Thomas “Dell” Cotton (Chair)	Peanut Growers Coop. Mkt. Assoc.	Franklin, VA
Mr. Marshall Coyle	Kentucky Farm Bureau	Owingsville, KY
Mr. William Dunavant III	Dunavant Enterprises, Inc	Memphis, TN
Mr. Charles Earnest	Dolphin Land Co./Dolphin Cot. Co.	Steele, MO
Mr. William Gillon	National Cotton Council of America	Memphis, TN
Mr. Kater Hake	Delta and Pine Land Company	Scott, MS
Mr. Arnold Hamm	Flue-Cured Tob. Coop. Stabilization	Raleigh, NC
Mr. Bruce Hiatt	Virginia Farm Bureau	Richmond, VA
Mr. Kenneth Hood	H.B. Hood Gin Co.	Gunnison, MS
Mr. Jeffrey Johnson	Birdsong Peanuts	Suffolk, VA
Mr. Donald Koehler	Georgia Peanut Commission	Tifton, GA
Mr. Dewey Lewis	Peanut Farmer	Lowell, FL
Mr. Larry Meyers	National Peanut Growers	Washington, DC
Mr. Donald Nelson	Altria Corporate Services Inc.	Washington, DC
Mr. Thomas Crane Parrish	Dimon, Inc.	Danville, VA
Mr. Evans Plowden, Jr.	American Peanut Shellers Assoc.	Albany, GA



Mr. Michael Schafer	Farmer	Madison, IN
Mr. Thomas W. Smith	Calcot Limited	Bakersfield, CA
Mr. Clyde "Kirk" Wayne, Jr.	Tobacco Associates, Inc.	Washington, DC
Mr. Bobby Weil	Weil Brothers-Cotton Inc.	Montgomery, AL
Mr. Larry Wooten	North Carolina Farm Bureau	Raleigh, NC