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November 15, 2005

The Honorable Robert Portman
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ambassador Portman:

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 ITAC – 3, the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Biotech and Health/Science Products and Services, on the Free Trade Agreement between the USA and Oman.

Very truly yours,

Geoffrey Gamble,
Chair - ITAC-3

Attach.

USA – Oman Free Trade Agreement

Report of the
ITAC – 3, the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Biotech and
Health/Science Products and Services
(ITAC-3)
November 15, 2005

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the Oman – USA 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 Sector Advisory Committee on Chemicals and Allied Products hereby submits the following report.

II. Executive Summary of Committee Report

We believe that the negotiating objectives and priorities of ITAC-3 regarding the Oman FTA, with the exception of the subject of rules of origin, have substantially been met. Because of concern over the rules of origin language, industry sector representatives on ITAC-3, have struggled but have successfully reached a consensus that the Agreement promotes overall the economic interests of the United States as well as providing for equity and reciprocity within the chemicals, pharmaceuticals, medical devices, and allied products sectoral areas.

III. Brief Description of the Mandate of ITAC-3

ITAC – 3, the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Biotech and Health/Science Products and Services, in addition to counting representatives of the environmental community amongst its members, represents the following product sectors and subsectors:

Adhesives and Sealants
Specialty Chemicals
Industrial Chemicals

Rubber and Rubber Articles
Soaps and Detergents
Plastics and Compounded Products

Organic Chemicals
Inorganic Chemicals
Crop Protection Chemicals
Pharmaceuticals
Biotechnology
Dyes and Pigments
Paints and Coatings
Petrochemicals
Fertilizers
Printing Inks
Electronic Chemicals

Composite Materials
Biocides
Forest and Paper Product Chemicals
Rare Earth Metals
Radioactive Chemicals
Enzymes, Vitamins, and Hormones
Cosmetics, Toiletries, and Fragrances
Photographic Chemicals and Film
Catalysts
Animal Health Products
Medical Devices & Equipment

The sector coverage as listed above for ITAC – 3, includes the products and substances classified in the U.S. Harmonized Tariff Schedule (HTS) Chapters 28 – 40, as well as other specific chemicals found in HTS Chapters 13, 14, 15, 22, 23, 25, 27 and 55 as well as medical equipment found in HTS chapters 28, 38, 84, 85, 87, 90 and 94.

IV. Negotiating Objectives and Priorities of ITAC-3

ITAC-3 emphasized the following points prior to, and during the negotiations.

- **Importance**

From the perspective of our industrial sectors, Oman is not a significant trading partner with the United States. We continue to urge the Administration to devote its energies to negotiating FTA's with strategic trading partners. However, we want to reemphasize the twin priorities of implementation and enforcement of this and other free trade agreements.

- **Chemical Tariff Harmonization Agreement**

ITAC-3 has long supported the Chemical Tariff Harmonization Agreement (CTHA) initiated in the Uruguay Trade Round. Accordingly, we particularly favor increased trade relationships with current CTHA signatory countries as well as other nations that have chemical producing industries.

Over the long term, the U.S. chemical and medical devices sector favors, with appropriate staging, a multilateral agreement on the elimination of chemical tariffs by the world's producing nations. The pharmaceuticals sector supports immediate tariff elimination in accordance with the multilateral understanding on elimination of pharmaceutical tariffs. The negotiation by the Administration of FTA's with key producing countries can provide the catalyst to bring the tariff elimination objective into focus in the current round of multilateral negotiations under the auspices of the World Trade Organization. Until the Doha Development Agenda is successfully concluded, we support continuing efforts to achieve the elimination of tariffs through selective bi-lateral

and regional FTA's, including the Free Trade Area of the Americas (FTAA), and as part of countries' accessions to the WTO, as desirable alternatives, so long as they do not undercut efforts to achieve the ultimate goal of a level trading field and broad multilateral tariff elimination.

- **Staging of Market Access Provisions**

ITAC-3 favors realistic and balanced staging timetables in all FTAs, as well as the broader FTAA, for the elimination of tariffs and non-tariff barriers. ITAC-3 also favors immediate tariff elimination for the pharmaceutical sector in all FTAs and in the FTAA, in accordance with the multilateral consensus contained in the Understanding on Elimination of Pharmaceutical Tariffs.

- **Rules of Origin**

The rules of origin for chemicals under free trade agreements are a vitally important aspect for the chemicals sector.

We have proposed that the rules of origin in free trade agreements for chemical products (Harmonized Tariff Schedule Chapters 28-40) be based on the position taken by the United States in its submission to the World Customs Organization's Committee on Rules of Origin. These rules are hierarchical in nature, starting first with the concept of "tariff shift" as the test for determining whether there has been a substantial transformation of a product that will confer origin. Where a product, good, or substance does not meet the tariff shift rule, the second test should be the chemical reaction rule. If, following these two tests, the product's origin is still in doubt, a third set of tests based on additional rules for mixtures, purification, separation, and so forth.

ITAC-3 is not in favor of a "value content" rule of origin. We find these rules of origin to be burdensome and inefficient.

ITAC-3 strongly supports harmonizing rules of origin in all trade agreements.

- **Investment**

The industry members of ITAC-3 believe that the inclusion of a chapter in any free trade agreement providing for strong investment protection rules for U.S. companies is a priority.

Among the elements that we advocate that should be covered in an investment chapter are:

- The defining of investment in a comprehensive manner;
- The guarantee of the better of either MFN or national treatment;

- The provision for and the insurance of the free transfer of profits and capital;
- The adequate dealing with issues affecting the movement of key personnel;
- The disciplining of the use of performance requirements;
- The prohibition of expropriation except in the case of a public purpose and only with the payment of prompt, adequate and effective compensation;
- The guarantee that investment will receive fair and equitable treatment, with full protection and security, consistent with the principles of international law; and
- The insurance that investors have access to an effective mechanism in the agreement for the settlement of investor-state disputes within the provisions of the FTA that are consistent with the “Model BIT”, NAFTA, Chile, and Singapore.

Mr. Waskow has urged that the mandate in the Trade Act of 2002, requiring that foreign investors should receive no greater substantive rights than U.S. citizens are accorded under U.S. law, should be complied with. He further advocates that environmental and other public interest protections be fully protected in the text of the Agreement and that foreign investors should not be permitted to bypass the domestic judicial systems of the parties to any free trade agreement.

- **Labor and Environment Provisions**

ITAC-3 has advocated that U.S. negotiators should consider with great care the pursuit of this objective. The importance of labor and environment, and other issues such as human rights, must not be denied by any industry sector. However, all of the industry sector members of ITAC-3 believe that the complex and global issues of labor and environment are best dealt with in the international institutions that already exist to examine these issues—in the case of labor, the International Labor Organization, and, for the environment, the various multilateral environmental agreements (MEAs) and the WTO Committee on Trade and Environment, which seeks to determine how trade agreements and environmental agreements should interact. Approaching these issues in a piecemeal fashion through bilateral free trade agreements is, in the judgment of the industry sector ITAC-3 members, inadvisable.

The industry members of ITAC-3 also indicated that it is fundamentally misguided to include labor and environmental provisions in future trade agreements in such a way as to lead to the imposition of trade sanctions. If we were to pursue this formula, those members felt that the U.S. would ultimately be choosing a market-closing, not a market-opening strategy. Important trading partners would turn away from this strategy, and U.S. efforts to create more open markets would fail. The industry members have urged that the chemical and pharmaceutical industries, and their respective trade associations, get more actively involved in numerous discussions with interested parties about the relationship that should exist between trade and the environment. They believe

that dialogues of this nature are the best means of providing the basis for exploring constructive approaches on a multilateral level.

V. Advisory Committee Opinion on Agreement

ITAC-3 supports the approval of this Agreement. We would appreciate your special attention to our particular areas of concern, most notably rules of origin, which we consider to be hopelessly inadequate, especially where this Agreement may serve as a template for future FTAs.

The following specific comments are inserted in accordance with the numeration and titles in the Agreement text:

Chapter 1: Establishment of Free Trade Area and Definitions

No comment.

Chapter 2: Market Access for Goods

We are delighted that USTR succeeded in having all of the tariffs in our entire sector go to zero immediately upon implementation of the agreement. This is our ideal.

Chapter 3: Textiles & Apparel

We are concerned about the inclusion of the elastomeric fiber exemption under the de minimis rules for textiles. This limitation, treating elastomerics differently than all other yarns/fibers, severely restricts the economic growth opportunities for American cotton and man made fiber producers, yarn and fabric manufacturers, and apparel makers.

Chapter 4: Rules of Origin

We are very concerned about the rules of origin that have been negotiated in this Agreement. They are based on GSP rules of origin, and include a value content test and the notion of substantial transformation. We remain opposed to FTAs that use these outdated concepts. We are concerned that our international competitors will set up export platforms in Oman in order to take advantage of comprehensive duty free access to the US market. We are also concerned that firms in the USA will also set up to take advantage of these very liberal rules. Should this occur, the overall objective of improving business and employment opportunities in the USA will be defeated.

We are also concerned that this is the third recent agreement concluded in this region with these rules, Jordan being the first. We had asked USTR to secure more practical rules in the upcoming negotiations with Bahrain and SACU, as well as in other parts of the world.

We are aware that the United States intends to seek a Free Trade Area for the entire Middle East Region [MEFTA]. We support this concept but strongly urge that the language on Rules of Origin employed with Jordan, Morocco and now Oman not be used as a template for any future negotiations.

Chapter 5: Customs Administration

No Comment

Chapter 6: Sanitary and Phytosanitary Measures

No Comment

Chapter 7: Technical Barriers to Trade

No Comment

Chapter 8 Safeguards:

No Comment

Chapter 9 Government Procurement

No Comment

Chapter 10 Investment:

No Comment

Chapter 11 Cross Boarder Trade in Services:

No Comment

Chapter 12 Financial Services:

No Comment

Chapter 13 Telecommunications:

No Comment

Chapter 14 Electronic Commerce:

No Comment

Chapter 15 Intellectual Property Rights:

No Comment

Chapter 16 (Chapter number is missing in the text on USTR website)

Chapter 17 Environment:

No Comment

Chapter 18 Transparency:

No Comment

Chapter 19 Administration of Agreement:

No Comment

Chapter 20 Dispute Settlement:

No Comment

Chapter 21 Exceptions:

No Comment

Chapter 22 Final Provisions:

No Comment

Annexes:

No Comment

VI. Membership of Committee (See below)

Chairman

Mr. D. Geoffrey B. Gamble, Esq.
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Vice-Chairman

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United States Government:

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