

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

February 1, 2006

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 United States Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services on the Trade Promotion Agreement between the United States and Peru.

Very truly yours,

Geoffrey Gamble

Chairman ITAC - 3
United States Industry Trade Advisory Committee for Chemicals, Pharmaceuticals,
Health/Science Products and Services

USA – Peru Trade Promotion Agreement

Report of the
United States Industry Trade Advisory Committee for Chemicals, Pharmaceuticals,
Health/Science Products and Services [ITAC-3]
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Advisory Committee Report to the President, the Congress and the United States Trade Representative on the US - Peru Trade Promotion 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 United States Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health/Science Products and Services hereby submits the following report.

II. Executive Summary of Committee Report

We believe that the negotiating objectives and priorities of ITAC-3 regarding the Peru TPA have substantially been met. We are very pleased with the rules of origin that were included in this agreement. We are also pleased that all tariff lines eventually go to zero but are disappointed in the number of lines in our sector that are the subject of extended staging. All but one of our members are concerned the subject of biodiversity was introduced in this agreement because we do not believe that an FTA or TPA is the appropriate vehicle for this issue.

III. Brief Description of the Mandate of ITAC-3

ITAC – 3, the United States Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, 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
Organic Chemicals
Inorganic Chemicals
Crop Protection Chemicals
Pharmaceuticals
Biotechnology
Dyes and Pigments
Paints and Coatings
Petrochemicals
Fertilizers
Printing Inks
Electronic Chemicals
Medical Products

Rubber and Rubber Articles
Soaps and Detergents
Plastics and Compounded Products
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
Health Services
Science Products

The product 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.

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, Peru 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, and its predecessor, the Industry Sector Advisory Committee for Chemicals and Allied Products [ISAC-3], have 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 sector generally favors, with appropriate staging, a multilateral agreement on the elimination of chemical tariffs by the world's chemical producing nations. The pharmaceuticals sector supports immediate tariff elimination in accordance with the multilateral understanding on elimination of pharmaceutical tariffs. The negotiation by the current Administration of FTA/s with key chemical 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 chemical tariffs through selective bi-lateral and regional FTA/s, 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 FTA/s for the elimination of tariffs and non-tariff barriers. ITAC-3 also favors immediate tariff elimination for the pharmaceutical sector in all FTA/s 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 as many trade agreements as possible.

- **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 is consistent with the “Model BIT”, NAFTA, and with the Chile, and Singapore FTA/s.

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 followed. He further advocates that environmental and other public interest protections be fully protected in the text of any 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 these objectives. 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 judgement of the industry sector ITAC-3 members, inadvisable.

The industry members of ITAC-3 also indicated that it is a fundamentally misguided strategy 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 inclusion of the subject of biodiversity and the extended staging of tariff elimination, 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: Initial Provisions and General Definitions

No comment.

Chapter 2: National Treatment and Market Access for Goods

We are pleased that all tariff lines eventually go to zero. We wish that the USTR had been able to close a tariff deal closer to that which it negotiated with Australia where almost all tariff lines were reduced to zero upon implementation of that agreement. We are disappointed in the number of lines in our sector that are the subject of extended staging, but recognize the struggle that the USTR faced in this area and therefore accept what has been done.

Chapter 3: Textiles & Apparel

No comment

Chapter 4: Rules of Origin Procedures

We are very pleased with the rules of origin that are included in this agreement. ITAC-3 worked very closely with Mr. Jay Eizenstat of the Office of the USTR to obtain rules for our sector that ensure that chemical products subject to, and taking advantage of, this agreement are truly territorial to the parties to it, namely the US and Peru. We applaud Mr. Eizenstat for a job well-done!

It is our hope that the chemical rules of origin contained in the Peru TPA are followed in future FTA/s and not those unfortunately found in the agreements with Jordan, Morocco, Israel and Bahrain, which all contain a GSP-based rule. We continue to urge the USTR to work to secure more practical rules in ongoing free trade negotiations 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 Israel, Jordan, Morocco, and now Bahrain, not be used as a template for any future negotiations.

Chapter 5: Customs Administration and Trade Facilitation

No Comment

Chapter 6: Sanitary and Phytosanitary Measures

No Comment

Chapter 7: Technical Barriers to Trade

No Comment

Chapter 8 Trade Remedies

No Comment

Chapter 9 Government Procurement

No Comment

Chapter 10: Investment

No Comment

Chapter 11: Cross-Border Trade in Services

No Comment

Chapter 12: Financial Services

No Comment

Chapter 13: Competition Policy

No Comment

Chapter 14: Telecommunications

No Comment

Chapter 15: Electronic Commerce:

No Comment

Chapter 16: Intellectual Property Rights:

Chapter 17: Labor:

No comment

Chapter 18: Environment:

While we are committed to promoting and encouraging the conservation and sustainable use of biological diversity, we believe that neither an FTA nor a TPA is the appropriate place for discussion or commitments on this important subject. Mr. Waskow of Friends of the Earth, and a member of ITAC-3, feels that inclusion is appropriate and warranted.

Chapter 19: Transparency:

No Comment

Chapter 20: Administration of Agreement and Trade Capacity Building:

No Comment

Chapter 21: Dispute Settlement:

No Comment

Chapter 22: Exceptions:

No Comment

Chapter 23: Final Provisions:

No Comment

Annexes:

No Comments

Other Documents:

No Comments

VI. Membership of Committee

Chairman

Geoffrey Gamble, Esquire,
Chief International Counsel
Director of International Government Affairs
E.I. du Pont de Nemours & Company

Vice-Chairman
Mr. V.M. (Jim) DeLisi,
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Ms. Lori M. Anderson, CAE
Strategic Planning & Industry Relations Officer
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Ms. Katherine M. Dutilh
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Mr. Isi Siddiqui
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CropLife America
Mr. Arthur J. Simonetti
Director, Trade Regulation and Legislation
Honeywell International, Inc.

MS. Lisa Schroeter
Director of International Policy
The Dow Chemical Company

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Mr. Louis G. Santucci
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Mr. Henry P. Stobenau
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Representative