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March 12, 2004

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

The Honorable Donald Evans
Secretary
Department of Commerce
Washington, D.C. 20230

Dear Ambassador Zoellick and Secretary Evans:

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 Functional Advisory Committee on Customs Matters (IFAC 1) on the U.S.- Australia Free Trade Agreement, reflecting our consensus advisory opinion on the proposed Agreement.

We also wish to take this opportunity to thank those in your offices who have made the extra effort to keep our committee advised of developments. It is a pleasure to work with them on these customs issues because the results in the Agreement demonstrate that our views and opinions were heard and taken into consideration.

Sincerely,

James B. Clawson

James B. Clawson
Chair
IFAC I

Enclosure

The U.S.-Australia Free Trade Agreement

**Report of the
Industry Functional Advisory Committee on Customs Matters
(IFAC 1)**

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Industry Functional Advisory Committee on Customs Matters (IFAC 1)

IFAC 1 Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. –Australia 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 trade 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, IFAC 1 hereby submits the following report.

II. Executive Summary of Committee Report

The Committee reviewed that part of the Agreement that covers customs procedures or is otherwise required to be administered by the customs administrations of the parties. The Committee has not reviewed or commented on the other provisions in the agreement such as procurement, intellectual property or the agriculture and non-agriculture market access provisions. The Committee found the Agreement to be fair and balanced. It provides many benefits to U.S. traders. As a result of these positive provisions, the Committee believes the Agreement does provide equity and reciprocity in the customs functional area.

III. Brief Description of the Mandate of IFAC 1

The Industry Functional Advisory Committee (IFAC 1) on Customs Matters is concerned with all aspects of the process of importing and exporting goods through customs services, both domestic and foreign, and, with facilitation of the movement of such goods into and out of customs.

Industry representatives serving on the Customs IFAC provide advice on trade policy matters. The Committee includes both customs experts and representatives from many of the Industry Sectional Advisory Committees (ISACs). Recently, members of the Customs IFAC have

provided advice on a range of issues that included: the Trade Facilitation negotiations, the Agreement on Rules of Origin, the Import Licensing Agreement, and provided input to the Harmonized System Committee in the World Customs Organization (WCO). The committee also provided advice and recommendations on the operations and implementation of the Customs Valuation Agreement, and on the various Asia Pacific Economic Conference (APEC) customs recommendations. Another area of emphasis for the committee was customs related provisions and trade facilitation measures in the Transatlantic Business Dialogue (TABD), the Free Trade Agreement of the Americas (FTAA) and other free trade Agreements. Members of the Customs Committee also worked on WTO trade facilitation efforts and initiatives for the Doha round of trade negotiations, international trade data systems, and customs import security issues.

Industry representatives serving on the Industry Trade Advisory Committee on Customs Matters and Trade Facilitation have a voice in U.S. trade policy formulation through the Industry Consultations Program (ICP), which emerged from the 1974 Trade Act; to ensure that trade negotiators were coordinating with the private sector during trade negotiations. Based on the program's success, the ICP was renewed and expanded by the Trade Agreements Act of 1979 and the Trade and Competitiveness Act of 1988. The Department of Commerce, the Office of the United States Trade Representative (USTR) and other agencies work side-by-side with business leaders who serve as advisors to the U.S. Government. The Department of Commerce and USTR have joint responsibility for operating the Advisory Committees of the ICP.

IV. Negotiating Objectives and Priorities of the Committee

While a number of areas were negotiated as part of the U.S.–Australia Free Trade Agreement that could have customs implications, there were several principal objectives of the Committee. The functions of the import process and how it is administered can make the Agreement more successful for the benefit of traders or it can maintain non-tariff barriers to that trade. Another objective was to ensure that the rules and regulations are transparent and understandable to all traders including small and medium sized enterprises. We also wished to ensure that the Agreement included a mechanism to keep those practices for import and export current with business “best practices.”

To provide advice on these objectives the Committee commented on the following issues:

A. Adherence by Australia to existing customs conventions including:

- Harmonized Commodity Coding System (HS)
- WTO Agreement on Customs Valuation
- ATA Carnet
- Rules of Origin Agreement
- Drawback
- Pre-shipment Inspection Agreement
- Trade Facilitation

B. Use of electronic import processing including use of electronic certification of origin.

C. Reducing import clearance times.

- D. Adoption of clear and transparent rules of origin for determining eligibility of products for preference with an appeal process.
- E. Mechanisms to keep customs rules updated and current with best practices.

V. **Advisory Committee Opinion on Agreement**

With experience from the Chile and Singapore Free Trade Agreements and the work underway in the Doha Round and Free Trade Agreement for the Americas (FTAA), the customs sections of the U.S.-Australia Free Trade Agreement substantially meet the Committee's objectives. It should be noted, at the outset, that Australia has a Customs regime that is inherently more sophisticated than those of other nations with whom the U.S. has entered into free trade agreements. For example, Australia adheres to the Harmonized System Convention, and it has acceded to the Valuation Code in compliance with the timeframes set forth in the WTO Agreement.

Nevertheless, U.S. negotiators met regularly with the Committee and solicited advice. The negotiators were responsive to the unsolicited advice from the Committee as well. From the results included in the Agreement it is apparent that the negotiators accepted the Committee's advice and sought to achieve all of the objectives of the Committee. Accordingly, and on balance, the Agreement provides equity and reciprocity in the customs areas.

The following is a more detailed description of some of the customs provisions that the Committee believes our negotiators were successful in reaching the objectives of the Committee.

▪ **General Provisions**

The Committee reviewed the customs section of the Agreement and is pleased that so many of the current best practices have been included in those provisions. Such practices include the utilization of risk assessment as a tool to enable customs officials to concentrate on high-risk shipments, and the provision of expedited procedures in connection with express shipments. The Agreement also implements the 48-hour release of goods standard and provides for the use of various security mechanisms (e.g. bonds) in connection with the release of goods. The Agreement also provides for the establishment of procedures for obtaining advance rulings, and provides for the review and appeal of such rulings.

▪ **Definitions**

The definitions section provides clear and beneficial descriptions for the terms, Temporary Admission; Waste and scrap; Used goods; Recovered goods; and especially Remanufactured products.

▪ **Rules of Origin**

The Committee reviewed this section for process, not application of the rules. Determination of whether the application of the rules meets the objectives of specific sectors is left to each sector. For process, the origin sections provide for clear rules, ability to request advance rulings, and an avenue for appeal of that ruling. The general provisions also provide for *de minimis* non-originating components and permits use of the concept of accumulation. The Agreement's strong advance ruling provisions permit the use of advance rulings with respect to origin determinations.

▪ **Certification of Origin**

The negotiators were able to obtain excellent provisions for the handling of claims for preferential treatment. The claims may be made, upon request, in the form of statements, which need not be made in a prescribed format. The statements may be submitted electronically. Accordingly, these procedures are less burdensome than those contained in earlier agreements.

▪ **Customs Valuation**

The Committee is pleased that the Agreement sets forth the obligation on the part of the two parties to apply the provisions of the Agreement on the Implementation of Article VII of GATT1994 (Valuation Code). The Agreement further recognizes the principle that software should be valued on the basis of the value of the carrier media. These are both important and longstanding objectives of the Committee.

▪ **Dispute Resolution**

The Dispute Resolution procedure in the Agreement is well thought out and appears to be workable.

▪ **Trade Facilitation**

The Committee is pleased that the Agreement includes provisions designed to facilitate the international movement of goods. Trade facilitation is an absolutely essential ingredient of trade negotiations, and even more so in light of the recent dramatic downturn in the global economy. Trade facilitation provisions should be focused on the simplification and harmonization of Customs procedures and practices. The process should be transparent and predictable. They should also require the Parties to maintain appropriate measures to ensure efficient and fair Customs facilitation of goods that are imported and/or exported by express delivery services suppliers. The Agreement's provisions do that. However, we are disappointed with the agreement's inclusion of a six-hour target for release of express shipments; we would urge that future agreements aim to cut that target at least in half.

▪ **Other Provisions**

Other provisions such as Drawback, Alteration and Repair, Remanufactured Goods, User Fees, Import Pricing and Licensing all have met the objectives of the Committee. The Committee is pleased with the decision to retain Duty Drawback for those who qualify.

VI. Membership of Committee

The Committee is fortunate to have both customs experts and representatives from the industry sector committees. The customs expert members are:

Mr. James Clawson
Ms. Marietta Bernot
Mr. Robert Leo, Esquire
Mr. John McGovern
Mr. Selig (Sandy) Merber, Esquire
Ms. Susan Presti

Mr. Lauren Rachlin, Esquire
Mr. Gilbert Lee Sandler, Esquire
Ms. Marjorie Shostak
Ms. Evelyn Suarez, Esquire
Mr. George Weise