

March 12, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Executive Office of the President  
Washington, DC 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 ISAC 7 (Ferrous Ores and Metals) on the United States-Australia Free Trade Agreement, reflecting consensus on the proposed Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "William Pendleton", written in a cursive style.

For William Pendleton  
Chair, ISAC 7

The U.S.-Australia Free Trade Agreement (FTA)

Report of the  
Industry Sector Advisory Committee on Ferrous Ores and Metals  
ISAC 7  
March 2004

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Industry Sector Advisory Committee 7 for Ferrous Ores and Metals

**Advisory Committee Report to the President, the Congress and the United States Trade Representative on U.S.— Australia Free Trade Agreement (AFTA)**

**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 principal 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 ISAC-7 for Ferrous Ores and Metals hereby submits the following report.

**II. Executive Summary of Committee Report**

The United States – Australia FTA reviewed by ISAC-7 does not provide for changes in, or changes in application of, U.S. AD-CVD statutes—ISAC-7's most important concern in regard to trade remedy laws. And, as regards AD-CVD, each party retains its rights and obligations under WTO. Provisions on safeguards and government procurement reflect the “boiler plate” texts ISAC-7 reviewed previously in the FTAs with Singapore and Chile, and appear to create no particular problems for ISAC-7.

ISAC-7 also concludes from its review of this agreement that it promotes the economic interests of the United States and achieves the applicable overall and principal negotiation objectives set forth in the Trade Act of 2002. ISAC-7 further concludes that this agreement provides for equity and reciprocity in ISAC-7's sector, ferrous ores and metals.

ISAC-7 qualifies the conclusions stated in the paragraph above however, by observing (i) that the agreement with Australia covers only a very small proportion of the international trade of the

U.S. and (ii) that even that coverage does not relate to ISAC-7's concerns, for example, with the functioning of the WTO (especially dispute settlement provisions), which certainly affect our sector's economic interests and the equity and reciprocity for the U.S. overall that we seek in U.S. trade agreements.

**Finally, and recognizing that currency exchange rates are not an issue specified in the Australia FTA, ISAC-7 wishes to express its deep concern at the lack of a clear, specific policy on U.S. dollar exchange rates as they effect trade agreements and their implementation. The core of the Committee's position is that market forces should determine exchange rates, without manipulation by governments. The committee plans to make further proposals on this subject shortly.**

### **III. Brief Description of the Mandate of ISAC-7 for Ferrous Ores and Metals**

The Committee shall perform such functions and duties and prepare reports, as required under Section 135 of the Trade Act of 1974, as amended, with respect to this sector and functional advisory committees.

The Committee advises the Secretary and the USTR concerning 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 these matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions thereunder.

In particular, the Committee provides detailed policy and technical advice, information, and recommendations to the Secretary and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 and 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, which affect the products of its sector; 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.

### **IV. Negotiating Objectives and Priorities of ISAC-7 for Ferrous Ores and Metals**

Negotiating Objectives and Priorities for Ferrous Ores and Metals in the multilateral Doha Round and in bilateral Free Trade Agreements such as this FTA include the preservation and strengthening of the international trade rules with regard to the right to initiate trade actions against unfair trade activities by foreign producers. The paramount objective is to ensure that the availability and enforceability of trade remedies provided under US law are not in any way, shape or form weakened by, or as a result of, this or other negotiated trade agreements.

Another key and related objective is the reform of the current WTO dispute settlement process, particularly as it dilutes US laws and sovereignty. It is critical that neither this nor any other FTA compromise this objective.

A third key objective is the elimination of non-tariff trade barriers (NTB's) that prevent or deter fair foreign market access by US producers of ferrous ores and metals. This would include policies which would create any bias against US exports. It is critically important that all FTAs move in the direction of supporting the elimination of NTB's.

**A fourth, equally important objective is to ensure that, in the implementation of trade agreements, currency exchange rates are determined by market forces, without any governmental manipulation.**

## **V. ISAC-7 Opinion on the Agreement**

First, ISAC-7 members' overriding concern in considering the U.S.–Australia FTA is with the extent to which this FTA may weaken the availability and enforceability, under U.S. law, of effective remedies against unfair trade practices affecting U.S. companies whose trade interests are represented by ISAC-7 members. The remedies in question are principally those provided by U.S. anti-dumping and countervailing duty laws, safeguards provisions and other statutory provisions against anti-competitive practices in international trade. ISAC-7 members believe that it is more important than ever to enforce trade remedies strictly, given the evidence of growing public doubt about the benefits of free trade; the results of the recent survey on this subject by the University of Maryland's Program on International Policy Attitudes attest to this change of public mood.

Second, ISAC-7 members are also deeply concerned, in regard to both this FTA and all others, as to the fairness and effectiveness of dispute settlement provisions, both as provided for in the FTA and, most critically, as implemented by the WTO overall.

Third, given the relatively small role of Australia's steel industry in global steel industry trade, ISAC-7's review of the FTA is centered as much on the precedents set for other FTAs in future, especially the FTAA and FTA's which may result from the Doha Round, as on the specifics of the U.S.-AFTA itself.

Fourth, the difficulties which privately owned U.S. companies face in competing in foreign markets where governments play influential roles in ownership, business policies and/or management, mean that WTO government procurement rules are of major commercial importance for U.S. firms, especially when market opportunities in defense-related, construction, motor vehicles, and rail, air and seaport projects, etc., are involved.

In light of all of the above, ISAC-7 notes that the U.S. -Australia FTA makes no changes in the applicability of U.S. anti-dumping or countervailing duty laws; that provisions for safeguards disallow quantitative restrictions and tariff quota measures; any repeated imposition of a safeguard is forbidden after a first implementation; and that dispute settlement provisions are improved (e.g., by open public hearings, public release of legal submissions, and right of interested third parties to submit views) without, however, making urgently needed fundamental corrections to the existing WTO dispute settlement system.

ISAC-7 notes also that numerous states have agreed to be covered by the government procurement provisions of these FTAs, including such important industrial states as Illinois, Maryland, Michigan, New York and Pennsylvania. These inclusions are likely to be detrimental to American steel interests unless there is strict adherence to exclusions, consistent with international trade rules, that are specifically provided for those manufactures of special concern to steel: federally funded mass transit and highway, rail, airport and seaport projects, defense procurement, motor vehicles, specialty metals and “construction grade steel.” ISAC-7 members will be closely monitoring the details of implementation of these government procurement provisions, and strongly recommend that the U.S. government provide reports, at least annually, on how their implementation has worked in terms of U.S. companies’ participation in procurement contracts, both foreign and domestic.

**VI. Membership of Committee**

Maurice Carino, Jr.  
Consultant  
Davis and Harman, LLP  
Representing International Steel Group

Thomas Danjczek  
President  
Steel Manufacturers Association

Frank Fenton  
Counselor, International Trade and Economic Relations  
Representing Cold Finished Steel Bar Institute

James Fritsch  
Executive Vice President  
Commercial Metals Company Steel Group

David Hawley  
Consultant  
Representing Ryerson Tull

William Hickey  
President  
Lapham-Hickey Steel, Inc.

Robert Johns  
Director of Marketing , Sheet Mill Group  
Nucor Corporation

Peter Mulloney  
Consultant  
Representing GS Industries

William Martin  
Vice President  
Neenah Foundry Company

Raymond Monroe  
Executive Vice President  
Steel Founders Society of America

C. Davis Nelsen, II  
President and Chief Executive Officer  
Nelsen Steel Company

John Nolan  
Vice President, Sales and Marketing  
Steel Dynamics, Inc.

William Pendleton  
International Trade Counsel  
Carpenter Technology Corp.

Lester Shapiro  
Consultant  
Representing Metallia, USA

Terrence D. Straub  
Senior Vice President-Public Policy  
and Governmental Affairs  
United States Steel Corporation

Robin K. Weiner  
President  
Institute of Scrap Recycling Industries