

February 28, 2003

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th 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 Industry Sector Advisory Committee on Nonferrous Metals and Ores for Trade Policy Matters on the U.S.-Chile Free Trade Agreement, reflecting consensus opinion on the proposed Agreement.

Sincerely,

Joseph L. Mayer
Chair
Industry Sector Advisory Committee
on Nonferrous Metals and
Ores for Trade Policy Matters

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

Report of the
Advisory Committee on Trade Policy and Negotiations (ACTPN)

February 2003

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Industry Sector Advisory Committee on Nonferrous Metals and Ores for Trade Policy Matters

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S.-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 Industry Sector Advisory Committee on Nonferrous Metals and Ores for Trade Policy Matters (ISAC 11) hereby submits the following report.

II. Executive Summary of Committee Report

The U.S.-Chile FTA is an important agreement for ISAC 11, not least because, Chile is a significant producer and exporter of nonferrous metals, notably copper, for which it is the world's largest producer and exporter. It is not, however, a sizable consumer of U.S. exports of nonferrous metals and metal products. In addition to eliminating remaining duties on imports of nonferrous metals, particularly copper, from Chile, the FTA addresses other topics of importance to ISAC 11 companies and industries, notably competition policy, environment, labor, customs/rules of origin, dispute settlement, and safeguards. The chapters on market access, environment, and dispute settlement were topics repeatedly addressed in meetings of ISAC 11 over the course of the negotiations.

This Committee Report will identify the negotiating objectives and priorities for ISAC 11, including instances where U.S. negotiating positions differed from the recommendations of Committee members. In some cases these positions did not pose a substantive concern for

Committee members, given the relative size of the Chilean economy. However, Committee members have been cognizant of concurrent negotiations for a Free Trade Area of the Americas, as well as the just-launched WTO Doha Development Round, the Central American Free Trade Agreement, and other, bilateral, trade negotiations. As such, this Report will also identify areas where the Committee had concerns with precedents being established in the U.S.-Chile FTA.

This report is based on the draft of the FTA made available to Committee members for review in preparation of this report. It is the understanding of the Committee that this is not a final text; the report is still subject to a "legal scrubbing" and other possible revision. The Committee wishes to note this reservation, and will submit comments to the USTR on any changes to the text which affect the opinions of this report, or which are of general concern to the Committee. For future FTAs, the USTR would enhance the ability of the Committees to report their opinions of the agreements if the Committees are basing these reports on finalized text.

III. Brief Description of the Mandate of Industry Sector Advisory Committee on Nonferrous Metals and Ores for Trade Policy Matters

The Committee advises the Secretary and the USTR concerning the 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 those 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 of Commerce and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 or 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 Industry Sector Advisory Committee on Nonferrous Metals and Ores for Trade Policy Matters

- Reduction and elimination of remaining barriers to trade in a manner which does not unduly disrupt markets.
- No requirement for the U.S. to reduce and eliminate tariffs prior to or independently of Chile.
- Rules of origin procedures consistent with the NAFTA agreement.
- Investment protocol which enhances opportunities for U.S. companies to invest in the Chilean metals and mining sector.
- Preservation of existing U.S. and WTO trade laws and remedies (safeguards, anti-dumping/countervailing duties).
- An environmental (and labor) side-agreement, as opposed to a chapter in the text of the FTA, which encourages private-sector cooperation toward furthering the advancement of

- environmentally sustainable economic development.
- A cooperative dispute settlement procedure, aimed at encouraging compliance with the provisions of the FTA.

V. Advisory Committee Opinion on Agreement

Market Access

ISAC 11 is satisfied with the agreement's approaching tariff reduction and elimination in a reciprocal manner, so that U.S. tariffs will not be reduced or eliminated prior to or independent of the respective Chilean tariff reduction and elimination. However, despite an overall positive outcome, the initial U.S. negotiating position on tariff reduction and elimination (modalities) going into the negotiation was a subject of concern. U.S. negotiators continue to identify tariffs below five percent as "nuisance tariffs" despite continued advice from ISAC 11 that tariffs as low as one percent can have a significant impact on prices in commodity and commodity-like industries, such as nonferrous metals. This initial negotiating stance has carried over into FTAA and WTO modalities.

One specific item, copper cathode, was the subject of considerable negotiation between U.S. and Chilean negotiators. ISAC 11 representatives of U.S. copper cathode producers argued that given U.S. mine closures, historically low copper prices, and increasing Chilean production and exports, the one percent duty on cathode should be eliminated gradually, and recommended a compromise reduction over a four-year period. ISAC 11 representatives of U.S. copper cathode producers further maintained that this would have allowed for a more gradual absorption of the impact by U.S. producers, and was thus in keeping with the negotiating objectives of the Committee to not unduly disrupt markets. The representative of U.S. copper and brass fabricators, citing concerns over weakening domestic supply and the issue of fairness (Chile is the only country in the hemisphere whose exports of copper cathode are subject to a duty in the U.S.), argued that the tariff on cathode should be eliminated immediately. Likewise, the Chilean government argued forcefully for no compromise and an immediate elimination of the duty. The final agreement eliminates immediately upon the FTA's coming into force the duty on Chilean cathode up to 55,000 tons, with additional imports subject to a one half percent duty ("tariff-rate quota"). The duty is completely eliminated upon the second year of the FTA's coming into force.

Customs/Rules of Origin

The Chile FTA market access agreement's rules of origin procedure is consistent with the NAFTA rules and is satisfactory.

Competition Policy

Unlike the Singapore FTA, the U.S.-Chile FTA contains no requirement for Chile to reduce the direct ownership/participation of the state in the economy.

Dispute Settlement

The proposed dispute settlement provision promotes a consultative and cooperative approach to dispute settlement and permits the initiating party to pursue remedy through the FTA's dispute settlement procedure or through the existing WTO process. As the procedure relates to environmental disputes, a new concept is being introduced in the Chile FTA with assessments going into a fund to be administered by a Commission. ISAC members are concerned that the FTA does not adequately provide the details necessary for both Parties to understand the framework in which the Commission administers and expends the monies in the fund. Furthermore the text in Article 16.4 states: "In deciding how to expend monies paid into the fund, the Commission shall consider views of interested persons in the Parties territories." This appears to the Committee to be a subjective decision and could abuse the intent, which is to encourage cooperation in advancing environmentally sustainable economic development.

Finally, Article 16.5 states appropriate steps including tariff benefits may be suspended by the complaining party if the party complained against fails to pay an assessment related to environment disputes. This Committee does not support the use of tariff measures to enforce environmental provisions in any FTA.

The Committee again notes that the text available to the Committee for review was not final; the report is still subject to a "legal scrubbing" and other possible revision. The Committee wishes to note this reservation, and will submit comments to the USTR on any changes to the text which affect the opinion of this provision, or which are of concern to the Committee.

Environment

ISAC 11 members would have strongly preferred an environmental side agreement rather than incorporating environmental provisions directly into the annex of the text of the FTA. The Committee does not view an FTA as the appropriate mechanism to address short-comings in environmental protection. Furthermore, the provision in Article 2.1.(a) – the "failure to enforce existing environmental rules in a manner affecting trade" – is an inherently subjective determination, and subjecting such a failure to the FTA's dispute settlement procedure invites third parties to abuse the mechanism in ways which could, in fact, negatively affect trade.

In addition to building upon existing cooperation between U.S. and Chilean agencies on environment and sustainable development, the chapter on environment also identifies a number of specific issues on which the two countries should initiate cooperative activities. On a number of occasions ISAC 11 communicated to USTR negotiators directly that it did not support listing specific environmental projects and objectives directly in the chapter on environment (again, favoring a side-agreement to address environment). In addition to being limited and arbitrary, this provision is of particular concern as it appears to concede that the FTA will produce negative impacts on the environment in the two countries. There is no evidence for this conclusion. In fact, the environmental review of the proposed agreement, conducted under the Executive Order requiring such reviews, correctly concluded that there was no significant environmental impact to be expected from a FTA between the two countries. This environmental review paid particular

attention to the mining and minerals sectors in both countries.

The Committee is concerned about the language in this section that sanctions the use of "carefully tailored trade measures" to achieve environmental goals in the context of multilateral environment agreements MEAs. While theoretically laudable, this language contains no counterbalance to assure that these trade measures are the least disruptive necessary to meeting those goals. There are also likely to be situations where either the U.S. or Chile is not a party to the MEA in question. Use of trade measures by the Party to achieve the goals of the MEA under those circumstances would not be acceptable to the non-Party.

Labor

Satisfactory, however the chapter does contain a similar provision pertaining to failure to enforce labor laws in a manner which affects trade, for which the ISAC would express similar concerns as in the chapter on environment.

Investment

Satisfactory.

Safeguards

Unlike the Singapore FTA, the Chile FTA fails to permit any bilateral safeguard provision following the transition period of ten years. As such, U.S. industry will have no opportunity to seek short-term relief under the provisions of the FTA if exports from Chile surge in a manner injurious to U.S. companies as a result of the FTA. WTO remedies will, of course, remain, though ISAC 11 companies would regard having an option under the FTA as preferable to being limited to only the WTO remedy.

VI. Membership of Committee

Chairman

Mr. Joseph L. Mayer
President,
Copper & Brass Fabricators Council

Mr. John Bullock, Attorney
representing the
International Precious Metals Institute

Mr. Jerome Cline
Senior V.P., Special Projects
Zinc Corporation of America

Ms. Linda Findlay
Vice President, Government Relations
The Phelps Dodge Corporation

Mr. John Hilbert, III
Senior Legislative Associate,
The Ferroalloys Association

Mr. Ivan L. Jeffery
President,
Crescent Brass Manufacturing Corporation

Mr. Peter K. Johnson
Director, Marketing and Public Relations
Metal Powder Industries Federation

Mr. Robin King
Vice President, Public Affairs
The Aluminum Association

Mr. James L. Mallory
Executive Director,
Nonferrous Founders Society

Ms. Moya Pheleps
Vice President, International Trade
National Mining Association

Mr. Russell C. Wisor
Vice President, Government Affairs
ALCOA

Mr. J Thomas Wolfe
Vice President for Environment Policy
representing Battery Council International
c/o Capital Environmental

