

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

**Report of the Industry Sector
Advisory Committee #7 for Ferrous Ores and Metals
February 2003**

February 27, 2003

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.— Chile Free Trade Agreement (FTA)

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

II. Executive Summary of Committee Report

The Committee finds that this FTA does not provide for any changes in U.S. AD or CVD law; somewhat improves the procedures on safeguards adjudications; and provides for some important (and helpful to steel affiliated companies) sub-federal (state) exclusions from government procurement provisions.

Although Chile's ferrous metals industry has a relatively small role in current global ferrous metal industry trade, the Committee reviewed the FTA with great interest because of the potential for establishing negative precedents for key provisions in future FTA's and the WTO Doha Round. We are pleased to generally support this FTA because it does not set any negative precedents; it does not provide for any weakening in U.S. Antidumping or Countervailing Duty law; it somewhat improves the procedures on safeguard adjudications; and provides for some important (and helpful to steel affiliated companies) sub-federal (state) exclusions from government procurement provisions. Also, we are pleased that the dispute settlement provisions are somewhat improved, although only in a minor way, over the existing WTO dispute settlement system. Greater reform is desperately needed in this area.

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 this FTA does not 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 Procurement and Buy-National policies which would create a bias against US exports. It is important that this FTA move in the direction supporting the elimination of NTB's.

V. ISAC-7 Opinion on the Agreement

First, ISAC-7 members' overriding concern in considering the U.S.—Chile 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. 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.

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.

Third, given the relatively small role of Chile's ferrous metals industry in global ferrous metal 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, as on the specifics of the U.S.—Chile FTA itself.

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

ISAC-7 notes that the U.S.—Chile FTA makes no changes in the applicability of U.S. anti-dumping or countervailing duty laws; that provisions for safeguards are limited to three years, with quantitative restrictions and tariff quota measures disallowed, and any repeated imposition of a safeguard forbidden after a first implementation; and that dispute settlement provisions are somewhat improved (e.g. by open public hearings, public release of legal submissions, and right of interested third parties to submit views).

ISAC-7 notes that 37 states have agreed to be covered by the government procurement provisions of this FTA, 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 that are formally provided for those manufactures of special concern to steel: federally funded mass transit and highway projects, defense procurement, motor vehicles and "construction grade steel". ISAC-7 members will be closely monitoring the details of implementation of these government procurement provisions, and suggest that the U.S. government provide reports, at least every six months, on how their implementation has worked in terms of U.S. companies' participation in procurement contracts, both foreign and domestic.

Given the relatively very limited role of Chile in the global ferrous metals industry and trade, it is not practically feasible to assess precisely the extent to which this FTA "promotes the economic interests of the United States," or "provides for equity and reciprocity within ISAC-7's sectoral area."

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