

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 (ISAC 11) on the U.S.-Singapore 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 Singapore Trade Agreement (FTA)

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

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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.-Singapore 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.-Singapore FTA has not been an overall priority issue for ISAC 11. The country is not a particularly large consumer of U.S. exports of nonferrous metals and metal products, though it is, of course, an important shipping center for trade between the U.S. and Asia.

Apart from eliminating remaining duties on imports of nonferrous metals, the FTA addresses some other topics of importance to ISAC 11 companies and industries, notably: competition policy, environment, labor, customs/rules of origin, dispute settlement, and safeguards.

This Committee Report will identify the negotiating objectives and priorities for ISAC 11, including instances where the agreement's provisions differed from ISAC 11 negotiating objectives and priorities. In most cases the agreed-to provisions did not pose a substantive concern for Committee members, given the relative size of the Singapore 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.-Singapore 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 (Committee)

- 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 Singapore.
- Functional rules of origin procedures consistent with previous agreements.
- 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 sustainable development.
- A cooperative dispute settlement procedure, aimed at encouraging compliance with the provisions of the FTA.
- Reduction of government (of Singapore) involvement in the economy.

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 Singapore 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.

Customs/Rules of Origin

The Singapore FTA market access agreement's rules of origin procedure is satisfactory.

Anti-Competitive Business Conduct, Designated Monopolies, and Government Enterprises

Unlike the U.S.-Chile FTA, the agreement does contain a requirement (not subject to dispute settlement) for Singapore to: "continue reducing, with a goal of substantially eliminating, its aggregate ownership and other interest that confer effective influence in entities organized under the laws of Singapore, taking into account, in the timing of individual divestments, the state of relevant capital markets." The chapter also requires the GOS to prepare an annual report on government ownership, enhancing the monitoring of the implementation of this provision.

Administration and Dispute Settlement

Based on previous reviews of the draft FTA, this provision appears generally satisfactory in that it promotes a consultative and cooperative approach to dispute settlement, and permits the initiating party to pursue remedy through the FTA's procedure or through the existing WTO process. However, the Committee again notes that the text available to the Committee for review was not final. As such, we would place a reservation on our opinion regarding the dispute settlement mechanism and will submit comments to the USTR on any text which may affect the Committee's opinion of this provision, or which is of concern to the Committee. The Committee can state, however, that while it is still unclear how negotiators precisely see the dispute settlement mechanism working, this Committee does not support the use of tariff measures to enforce environmental provisions in any FTA.

Safeguards

Unlike the Chile FTA, the Singapore FTA contains a safeguard provision which can be enacted following the transition period. Safeguards are permitted after the transition period with the consent of the Party against whose originating good the measure is taken (Article 7.2.6(c)).

While this provision does require GOS consent, and does explicitly require the initiating party to pursue FTA or WTO consultations (dispute settlement) concurrently, the Committee supports this provision - at least in precedent - allowing the possibility of a safeguard remedy for an import surge immediately injurious to U.S. industry which might arise from the elimination of duties under the FTA.

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. Although 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, the Committee does not view a FTA as the appropriate mechanism to address short-comings in environmental protection.

Furthermore, the provision in Article 18.2.1(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 way which could, in fact, negatively affect trade.

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 Singapore 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 – Article 17.2.1(a) – 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.

General Provisions

The Committee supports the provision within this chapter reaffirming the Parties’ commitment to anti-corruption measures. No such commitment exists in the U.S.-Chile FTA.

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 Vice President, 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 Phelleps
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

