

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)

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COMMUNICATION FROM THE UNITED STATES

DRAFT PROPOSAL COVERING STEEL TRADE

Revision

The Chairman of the Group of Negotiations on Goods has received the following communication, dated 29 October, from the Ambassador of the United States:

The United States submits for your consideration the following draft proposal covering steel trade. Since the proposal encompasses negotiations in several Negotiating Groups, the United States requests that you distribute the proposal to members of the Group of Negotiations on Goods. The United States invites comments from interested governments on this proposal.

This submission is made without prejudice to the form that such an agreement might take. Bracketed text represents items where the United States feels that further discussion is needed.

*English only/anglais seulement/Inglés solamente.

DRAFT UNITED STATES PROPOSAL

I. Subsidies for the Steel Industry

Article 1: Prohibited Subsidies

1.1 Signatories agree that subsidies adversely affect trade and that all subsidies to a steel producer are prohibited, except as provided in Article 1.2.

1.2 The following subsidies are not prohibited by this Article:

- (a) Assistance for basic and applied research, the results of which may be used without fee or restriction and are promptly made available to the public, including through periodic reports at least every six months during the conduct of the research, and that is limited exclusively to:
 - (i) costs of instruments, equipment and buildings used exclusively for basic and applied research;
 - (ii) costs of researchers, technicians and other staff exclusively for basic and applied research; and
 - (iii) consultancy and equivalent services used exclusively for basic and applied research, including research, technical knowledge, patents and similar services.
- (b) Assistance to benefit workers:
 - (i) when such assistance results from workers being made redundant or accepting early retirement by the discontinuance or curtailment of steel production or a decline in sales of steel products; or
 - (ii) under government mandated pension insurance programmes.
- (c) Assistance to reduce capacity, provided that such assistance (not including assistance provided for in Article 1.2(b)):
 - (i) is conditioned on the permanent closing within six months of the entire steel producing capacity of a steel producer and its related entities;
 - (ii) is made to a steel producer that has been engaged in steel production during the four consecutive years preceding the assistance;
 - (iii) does not result in use of the steel producer's plant or equipment for subsequent steel production by any entity; and

- (iv) is limited to the residual book value of the steel producer's facilities for steel production or the actual closing costs, whichever is less.
- (d) Assistance for environmental protection purposes, provided that:
 - (i) such assistance is limited to a maximum of 15 per cent of the cost necessary to adapt the existing plant and equipment of a steel producer to new standards in legislation mandating the reduction or elimination of pollution;
 - (ii) such assistance is limited to per cent per year of the capital assets of a steel producer; and
 - (iii) any part of such assistance which has the effect of increasing production capacity or operating efficiency shall continue to be prohibited.

1.3 With the objective of eliminating the adverse effects of subsidies on trade, signatories agree to review periodically whether the subsidies listed in Article 1.2 are having such effects, and if they are, to modify Article 1.2 to prohibit these subsidies.

1.4 Signatories agree that subsidies provided for in Article 1.2 should not undermine the objectives of these provisions. Any signatory which intends to provide any assistance must notify the other signatories at least one month in advance of providing such assistance. If any signatory believes the proposed assistance is prohibited by Article 1.1, such signatory may request consultations. In addition, if a signatory believes that another signatory intends to provide assistance that may be prohibited by Article 1.1 then the signatory learning of the intended action may request consultations and notify all other signatories. The signatory that intends to provide the assistance shall enter into consultations with the view of promoting the objectives of these provisions, shall provide requested information, and shall delay providing assistance pending conclusions of consultations within sixty days.

Article 2: Definitions

2.1 The term "subsidies" includes export subsidies and domestic subsidies.

- (a) The term "export subsidies" means any intervention or support for which eligibility or the amount of benefits is tied to actual or anticipated exportation or export earnings and includes those identified in the Illustrative List of Export Subsidies which is annexed to the Subsidies Code and, in addition, any export subsidies prohibited as a result of amendment to the Subsidies Code.
- (b) The term "domestic subsidies" means any intervention or support specifically provided, whether directly or indirectly, to the steel industry by law or in fact by the signatories, their member states, or any regional or local authorities, or through public resources or public intervention in any form whatsoever.

2.2 The determination of whether an intervention or support is "specifically provided" to the steel industry shall be guided by such principles on specificity as may exist under the Subsidies Code.

2.3 The subsidy element implicit in loans, loan guarantees and equity infusions shall be measured by reference to normal commercial terms according to the investment practices of a reasonable private investor in the jurisdiction in question.

2.4 The terms "basic research" and "applied research" do not include development.

- (a) The term "basic research" means study directed toward increasing knowledge in science, the primary aim being fuller understanding of the subject under study, rather than any practical application of that knowledge;
- (b) The term "applied research" means the effort that:
 - (i) normally follows basic research, but may not be severable from the related basic research;
 - (ii) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices or techniques; and
 - (iii) attempts to advance the state of the art.

The term "applied research" does not include efforts whose principal aim is the design, development or testing of specific items or services to be considered for sale.

- (c) The term "development" means the systematic use of scientific and technical knowledge in the design, development, testing or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives, including the functions of design engineering, proto-typing and engineering testing.

2.5 The term "steel producer" means any manufacturer or distributor of a product classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only), 7308, 7312 through 7314 or 7317 in the Harmonized Tariff Schedule.

2.6 The term "steel production" means any manufacturer or distribution of a product classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only), 7308, 7312 through 7314 or 7317 in the Harmonized Tariff Schedule.

2.7 The term "steel industry" means the steel producers in the territory of a signatory.

2.8 The term "existing plant and equipment" in Article 1.2(d) means facilities of a steel producer which have been in operation for at least two years prior to enactment of the environmental protection legislation for which assistance is being provided.

2.9 The term "steel product" means any product classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only) 7308, 7312 through 7314 or 7317 in the Harmonized Tariff Schedule.

Article 3: Relationship to the General Agreement on Tariffs and Trade (GATT)

3.1 Unless otherwise specifically provided in Article 3.2 hereof, signatories recognise that their rights and obligations under the GATT and under multilateral agreements negotiated under GATT auspices shall not be abridged and remedies permitted under such agreements shall not be affected.

3.2 Signatories agree that Articles XII and XVIII of the GATT and Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT ("the Subsidies Code") shall not serve to authorise a signatory to provide a subsidy prohibited by Article 1.1 of this section.

II. Subsidised Official Financing for Steel Plant and Equipment

Article 1: Officially supported export credits

1.1 Signatories agree that in order not to foster overcapacity in steel production, official grants, loans, tied aid credits, officially supported export credits or other official financing for steel plant and equipment are prohibited, except as provided in Article 1.2.

1.2 Government guarantees and insurance of commercial loans and government loans at market rates provided in the OECD arrangement on guidelines for officially supported export credits, that is the commercial interest reference rates defined by the OECD, are not prohibited. Signatories are permitted to match offers which are prohibited by this Article from countries which are not signatories to these provisions.

1.3 Signatories agree to notify other signatories prior to making offers of official financing and to seek common financing arrangements for exports of steel plant and equipment in order to ensure that official financial support is not used to increase excess steel-making capacity.

1.4 Signatories agree that Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code") shall not serve to authorise a signatory to provide an export credit prohibited by Article 1.1.

1.5 When guaranteeing or granting credits and other official financing not prohibited by this Article, the signatories shall take into consideration the viability of the projects and examine the possible repercussions on the global steel market.

Article 2: Definitions

2.1 The terms used in Article 1 shall have the same meaning as those terms have in the OECD arrangement on guidelines for officially supported export credits.

2.2 A tied aid credit or an officially supported export credit shall be considered to have been provided by a signatory if it is provided directly or through a special institution controlled by or acting under the authority of a signatory or a group including signatories.

2.3 The term "steel plant and equipment" means machinery exclusively designed for agglomerating, sintering, smelting, melting and refining raw materials, such as iron ore, coal, ferrous scrap, fluxes and alloys, used for making iron or steel, as well as equipment used to heat, shape, treat or coat steel mill products. Steel mill products are those classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only), 7308, 7312 through 7314 and 7317 in the Harmonized Tariff Schedule.

III. Tariffs for Steel Products

Article 1: Obligations

1.1 In order to achieve open markets for steel products, signatories agree to provide bound, duty-free treatment for imports of steel products.

Article 2: Definition

2.1 The term "steel product" means any product classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only) 7308, 7312 through 7314 or 7317 in the Harmonized Tariff Schedule.

Article 3: Relationship to the General Agreement on Tariffs and Trade (GATT)

3.1 Unless otherwise specifically provided in Article 3.2 hereof, signatories recognise that their rights and obligations under the GATT and under multilateral agreements negotiated under GATT auspices shall not be abridged and remedies permitted under such agreements shall not be affected.

3.2 Signatories agree that Articles XII and XVIII of the GATT shall not serve to authorise a signatory to deviate from the requirements of Article 1.1.

IV. Non-Tariff Measures for Steel Products

Article 1: Prohibited Non-Tariff Measures

1.1 With the objective of opening markets and preventing distortions to trade in steel products, signatories agree to eliminate and not introduce non-tariff measures for steel products including, but not limited to:

- (a) quotas or other quantitative restrictions, including voluntary restraint arrangements and agreements to co-ordinate or maintain patterns of trade;
- (b) control of price levels, other than measures implemented as a result of anti-dumping, countervailing duty, or safeguard laws;
- (c) additional fiscal charges that discriminate against imports, including import surcharges and surtaxes, special taxes on specific products, stamp taxes, licence fees, or consular service fees;
- (d) Service charges that discriminate against imports, including statistical taxes or taxes on transport facilities, but including customs user fees permitted under Article VIII of the General Agreement on Tariffs and Trade;
- (e) restrictive, preferential or discretionary licensing practices that discriminate against imports;
- (f) trigger price mechanisms;
- (g) official reference prices or other mechanisms that are used to calculate duties based upon hypothetical rather than actual transfer prices;
- (h) state trading monopolies or sole importing agencies;
- (i) special entry procedures that discriminate against imports and are restrictive, including standardisation, marking that seriously damages the product, packing, labelling or additional customs formalities; and
- (j) administrative or legislative guidance to control or influence production, supply, or prices, restrict imports or exports, or boost exports.

1.2 Signatories agree to eliminate and not introduce any non-tariff measure, whether or not listed in Article 1.1, that prevents open markets and distorts trade. If a signatory believes that any other non-tariff measure undermines the objectives of these provisions, signatories agree to consult with a view toward eliminating those measures or any trade distorting effects of such measures and may otherwise invoke the dispute resolution process.

1.3 Signatories agree to phase out all quotas for steel products, voluntary restraint arrangements for steel products and agreements to co-ordinate or maintain patterns of trade in steel products by 31 March 1992.

1.4 Signatories recognise that concerted activity among steel producers, or producers and related party consumers, can be used to restrain imports. Signatories recognise that such concerted activity could undermine the objectives of these provisions.

Article 2: Amendments

2.1 These provisions may be amended to provide for the addition or subtraction of non-tariff measures prohibited by Article 1.1 by consensus minus the country whose measure is under review.

Article 3: Definitions

3.1 The term "steel product" means any product classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only), 7308, 7312 through 7314 or 7317 in the Harmonized Tariff Schedule.

3.2 The term "steel industry" means the steel producers in the territory of a signatory.

3.3 The term "measure" means any law, regulation, procedure, requirement, practice, or administrative decision.

Article 4: Relationship to the General Agreement on Tariffs and Trade (GATT)

4.1 Unless otherwise specifically provided in Article 4.2 hereof, signatories recognise that their rights and obligations under the GATT and under multilateral agreements negotiated under GATT auspices shall not be abridged and remedies permitted under such agreements shall not be affected.

4.2 Signatories agree that Articles XII and XVIII of the GATT shall not serve to authorise a signatory to maintain or introduce a non-tariff measure prohibited by Article 1.1

V. Dispute Resolution for the Steel Industry

Article 1: Consultations

1.1 Signatories shall enter into consultations with each other concerning such representations that any signatory may make with respect to any matter affecting the operation of provisions on subsidies, tariffs, and non-tariff measures affecting steel producers, and provisions on subsidised export financing for steel plant and equipment and shall respond to requests for consultations within ten days.

1.2 Signatories recognise that the trade distorting practices of non-signatories could undermine the objectives of the provisions on subsidies, tariffs, and non-tariff measures affecting steel producers, and provisions on subsidised export financing for steel plant and equipment. Signatories shall enter into consultations periodically to examine whether the trade distorting practices of non-signatories undermine the objectives of the provisions on subsidies, tariffs, and non-tariff measures affecting steel producers, and provisions on subsidised export financing for steel plant and equipment and what steps should be taken to eliminate the trade distorting effects of those practices.

Article 2: Binding Arbitration

2.1 If a dispute arises between or among signatories arising out of, or related to, a representation that one of the signatories had taken action with regard to the steel industry that is inconsistent with provisions on subsidies, tariffs, or non-tariff measures affecting steel producers, or provisions on subsidised export financing for steel plant and equipment, and if such dispute is not settled through consultations within thirty days after a request therefor, then any signatory engaged in consultations may notify the other signatory or signatories that it is referring the dispute to binding arbitration.

2.2 When a signatory issues notice that it is referring the dispute to binding arbitration, it shall at the same time appoint a panelist. If another signatory or signatories join the signatory that refers the dispute to arbitration, they shall jointly appoint a panelist. Within fifteen days of such notice, the other signatory shall appoint a second panelist.

2.3 The two appointed panelists shall, within twenty days, appoint a third panelist, selected from a list of potential panelists compiled by the signatories and acceptable to the parties to the dispute. If the two panelists are unable to select a third, the third shall be appointed by random selection from the list. The third panelist shall serve as Chairman of the arbitration panel. In selecting the third panelist, potential panelists who are nationals of any party to the dispute shall be excluded from the list.

2.4 No panelist may have a financial interest in the matter or take instructions from any signatory that is a party to the dispute. The Chairman may not be a national of any party to the dispute. Upon appointment, each panelist, including the Chairman, must sign a declaration denying any such conflict of interest. At any time after the dispute has been referred to a panel, any party to the dispute may challenge any panelist on the basis of such a conflict of interest. Any panelist who has a conflict of interest shall be dismissed.

2.5 The confidentiality of all panel proceedings shall be maintained, including submissions to the panel, oral proceedings, and panel deliberations. Only the panel and assistants to the panel may be present during deliberations of the panel.

2.6 The panel shall abide by the rules and procedures in Appendix A. [Appendix A will cover timetables for written submissions, oral hearings, panelist selection, consideration of challenges to panelists, confidential treatment of submissions, and the full and effective rights of third parties to participate, including steel producers that may be affected by the panel's determinations. These rules shall assure a right to at least one hearing and the opportunity to provide written submissions and rebuttal arguments.]

2.7 The panel shall make its decision by majority vote.

2.8 Within [] days after the Chairman is appointed, the panel shall determine whether there has been a violation of the disciplines and obligations of the provisions on subsidies, tariffs, or non-tariff measures affecting steel producer, or provisions on subsidised export financing for steel plant and equipment. In extraordinary circumstances that prevent the panel from rendering its decision within such time period, the signatories that are parties to the dispute may agree to extend the deadline but only to the extent necessary.

Article 3: Remedies

3.1 In the case of a clear and significant violation of the disciplines and obligations of the provision on subsidies, tariffs, or non-tariff measures affecting steel producers or provisions on subsidised export financing for steel plant and equipment, any adversely affected signatory may impose a preliminary remedy to offset the effects of such violation pending a final decision by the panel. The preliminary remedy shall be subject to the same guidelines as a final remedy.

3.2 If the panel determines that there has been a violation, the violating signatory must eliminate the offending measure. The panel shall also determine the appropriate remedy to rescind the benefits received by the steel producers from the violation.

3.3 In determining the appropriate remedy, the panel shall observe the following guidelines:

- (a) the panel shall give preference to measures that are related to the product or products associated with the violation;
- (b) the panel may authorise the imposition by one or more signatories of temporary duties, or security therefor, on imports of products originating in the territory of the violating signatory, whether or not such imports are steel products;
- (c) the panel may require that the steel producer repay its government the amount by which the steel producer has benefited from the violation;
- (d) where the violation is found by the panel to have resulted in import substitution in the market of the violating signatory or displacement of the exports of the other signatory in the market of a third country, the panel may establish other appropriate remedial measures; and
- (e) in designing any remedial measures, the panel shall take the following into account:
 - (i) the gravity and nature of the violation;
 - (ii) the duration thereof;
 - (iii) the adverse effects on the interest of other signatories;
 - (iv) the proportion of trade in the product or products directly concerned with the violation;
 - (v) prior violations by the violating signatory; and
 - (vi) effects of any preliminary remedy imposed under Article 3.1.

3.4 Remedies decided by the panel shall not be applied cumulatively with national provisions in respect of the same factual elements which constituted the violation, whether they have already been decided or are decided concurrently or subsequently.

Article 4: Implementation

4.1 The panel shall establish a reasonable timetable for elimination of the offending measure by the violating signatory and for implementation of any remedy that it determines to be appropriate. With respect to the elimination of the offending measure, the violating signatory shall propose to the panel an appropriate timetable.

4.2 The signatories and their steel producers shall take the measures specified by the panel in its determination. The signatories shall report monthly to the panel on the progress of implementation.

4.3 If a signatory or its steel producer fails to eliminate the offending measure or to implement any remedy established by the panel within the timetable set and the signatories that are parties to the dispute cannot agree on appropriate compensation or alternative remedial action, then any adversely affected signatory may propose to the panel suspension of equivalent benefits to the non-complying signatory. Such suspension shall take effect within thirty days after the amount of the suspension of equivalent benefits is proposed to the panel unless the panel disapproves such amount within that time, provided, however that the portion of the amount not disapproved by the panel shall take effect at the time of the panel's disapproval. If a signatory or its steel producer fails to implement any monetary remedy as to the steel producer within the timetable set, any adversely affected signatory may seek collection under Article 4.5 instead of taking action under this paragraph.

[4.4 Each signatory shall recognise a monetary remedy determined by the panel as to a steel producer as a binding arbitral award that is enforceable within its territories by payment to an adversely affected signatory as if it were a final judgement of its national courts or the courts of any jurisdiction within the territories of the signatory.]

[4.5 Any adversely affected signatory seeking to obtain such payment by recognition and enforcement of such an award shall make application and supply a certified copy of the panel's written determination to the appropriate national court. At the request of the steel producer against which it is invoked, the court may refuse to recognise and enforce the award only on the following procedural grounds and only if the steel producer furnishes proof that:

- (a) the steel producer against which the award is invoked was not given proper notice of the appointment of the panel or of the panel proceedings or was otherwise denied the proper procedures such that it was deprived of the right to make its case;
- (b) the award deals with a matter not contemplated by or not falling within the terms of the dispute, or does not apply to the steel producer, provided that the court may recognise and enforce any part of the panel's determination on matters that do fall within the terms of the dispute, or that do apply to the steel producer, to the extent that the panel's determination on matters that do fall within the terms of the dispute, or which do apply to the steel producer, can be separated from those matters that do not;
- (c) the composition of the panel was not in accordance with these provisions; or
- (d) the panel's determination is not yet binding or the signatories that are parties to the dispute have decided not to implement the remedy contained in the panel's determination.]

[4.6 upon collection of an amount under Article 4.5, an adversely affected signatory shall notify the other signatories. Only one repayment shall be required. If a signatory believes that more than the amount determined by the panel has been collected, the signatory may refer its evidence to the panel, which shall decide the matter.]

Article 5: Definitions

5.1 The term "steel producer" means any manufacturer or distributor of a product classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only), 7308, 7312 through 7314 or 7317 in the Harmonized Tariff Schedule.

5.2 The term "steel industry" means the steel producers in the territory of a signatory.

5.3 That term "steel product" means any product classified under item numbers 7206 through 7306, 7307.22 (couplings only), 7307.92 (couplings only), 7308, 7312 through 7314 or 7317 in the Harmonized Tariff Schedule.

Article 6: Relationship to the General Agreement on Tariffs and Trade (GATT)

6.1 Signatories recognise that remedies permitted by the GATT or by multilateral agreements negotiated under GATT auspices shall not be affected.