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## ELEMENTS OF A STEEL SUBSIDIES AGREEMENT

Comments from the United States

The following communication, dated 2 May 2003, has been received from the Permanent Mission of the United States.

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The attached paper is provided by the United States for the information of other WTO Member delegations participating in the Rules Negotiating Group. Delegations will recall the December 2002 communiqué from the OECD High Level Group on Steel instructing work to begin "on the elements of an agreement for reducing or eliminating trade-distorting subsidies in steel" (TN/RL/W/24). In follow-up to that decision, the OECD Secretariat drafted for the consideration and comment of all participants in that process a list of questions and propositions relating to seventeen proposed elements of a steel subsidies agreement. In turn, the United States submitted the attached comments addressing each of the proposed elements, just as have other participants.

Consistent with our objective of keeping the Rules Negotiating Group fully informed of relevant work undertaken in the OECD exercise, we present these comments which outline the United States' initial reflections on the direction, scope, and nature of a steel subsidies agreement. As stated in the introduction to our OECD submission, our remarks should not be construed as official US positions or negotiating proposals, but rather as commentary intended to encourage further reflection and the exchange of views among participants. Similarly, they should not be considered as necessarily indicative of the views of other participants in the OECD steel process on the elements of an eventual agreement.

**Introduction**

Following the decision by participants in the OECD High Level Process on Steel to initiate discussions on an international steel subsidies agreement, the OECD Secretariat circulated for consideration and reaction a list of questions and propositions relating to the possible elements of such an agreement. The United States has carefully reviewed the seventeen elements identified by the OECD Secretariat and provides its initial thoughts with respect to those elements below.

Our senior officials have called for work on these issues to proceed expeditiously. That said, the United States views the Secretariat's useful questions and comments, and participants' reactions to them, as necessarily being just the starting point for our discussions. We urge other participants to consider the remarks which we have set forth below not as official US positions or negotiating proposals, but rather as commentary intended largely to provoke a constructive exchange and additional reflection. We look forward to reviewing other participants' comments in the same light, and to engaging in a productive discussion when the Disciplines Study Group meets on 24-25 February.

1. *Time frame and venues: Development of elements initiated in the OECD, with a view towards feeding the results into the WTO at an appropriate time. Developmental work to be completed in 2003.*

US Position

SUMMARY: The United States supports charting an ambitious schedule in the Disciplines Study Group to arrive at the elements of a steel subsidies agreement that could be considered for incorporation into the WTO rules framework. We favor completing work as early as possible in 2003, preferably in advance of the next WTO Ministerial scheduled for Cancun, Mexico, in September 2003.

DISCUSSION: The United States believes it is both desirable and feasible to move forward quickly in the development of the elements of an agreement that substantially strengthens international disciplines over distortive steel subsidies. The desirability of moving forward quickly stems from the urgent need to address meaningfully the longstanding problem of subsidization in this sector and the momentum we have built in this High Level Process, along with the opportunity afforded us by the fact of ongoing WTO negotiations. The feasibility stems from the significant degree of consensus that exists among participants on the basic shape and thrust of an agreement, notwithstanding any differences which may emerge over certain details. In that regard, a maximum effort should be made to achieve consensus on these elements, but if consensus is not possible to achieve in some areas, that should not stand in the way of completing the outlines of an agreement in as much detail as possible. At a minimum, in such cases, the work should identify the leading options which might be considered with respect to the element on which a consensus cannot for the moment be found.

We also feel that it is important for such elements to be developed based on the likelihood that they ultimately would be implemented within the WTO rules framework. This should have the effect of maximizing their compatibility with basic WTO rules and principles, and would allow us to focus initially and primarily on the substantive result, potentially deferring certain questions of implementation and enforcement. This would not, however, definitively resolve or forever side-step such important questions as whether a sectoral agreement should be added to the WTO or whether a stand-alone agreement might be feasible should it not become possible to integrate immediately the results of our work into the WTO. Our task should be to develop the elements of an agreement appropriate to address the problems of steel; at a later stage, and in the appropriate forum, separate

decisions may be reached concerning how/whether/when such elements might be taken into the WTO and, if so, what application they should have (e.g. either generally or to specific sectors).

2. *Character : The objective would be to work towards a formal, binding, enforceable subsidies agreement.*

US Position

SUMMARY: The United States concurs that the agreement needs to be formal, binding and enforceable.

DISCUSSION: Only a binding and enforceable agreement will provide the certainty needed to deal effectively with the subsidy problems that have hampered and distorted global steel industry adjustment. This element is essential to secure the confidence of both involved governments and affected industries. This, in part, is why eventual incorporation of the results into the WTO is both logical and desirable, given that institution's expeditious and professional system of dispute settlement rules and procedures. Of course, incorporation into the WTO is not the only way for such an element to be satisfied, but it may be one of the more efficient and easier ways available to us.

The binding nature of the agreement should apply at all levels of government within the jurisdiction of each signatory party, and include measures meeting the definition of a covered subsidy that are provided by state-owned and -controlled entities, as well as entities that are directed or entrusted to provide such measures by public authorities, with or without public funds. In this regard, participants might wish to consider the adoption of an explicit *"de facto"* standard by which it would be possible to present convincing evidence indicative of government direction in the provision of a subsidy by non-governmental entities.

Our initial thoughts on the matter of enforcement are discussed in more detail below, in relation to item 9. However, it probably bears mentioning here that, although we are recommending incorporation of the results of this work into the WTO, that does not exclude consideration of alternative or supplementary modes of enforcement beyond the customary procedures and standards of WTO dispute settlement. As it is, many agreements in the WTO contain "special and additional" rules on dispute settlement that are factored into dispute proceedings when those agreements are at issue.

3. *Product Coverage: The agreement could cover subsidies and related supports benefitting producers of the steel products defined in sections 7206 to 7306 of the Harmonized Tariff Schedule.*

US Position

SUMMARY: The United States generally agrees that the agreement should discipline subsidies provided to producers of steel products defined in sections 7206 to 7306 of the Harmonized Tariff Schedule.

DISCUSSION: Sections 7206 to 7306 of the Harmonized Tariff Schedule generally encompass the range of products of concern to us, but they do exclude certain products which were under consideration for inclusion in the draft Multilateral Steel Agreement (MSA). We believe it may be important to consider why these products were proposed to be included in the MSA, and whether those same considerations apply here.

On a more general level, however, to the extent that we are contemplating sectoral rules and disciplines, consideration of coverage issues must also take account of the parties receiving subsidies

(e.g. producers and exporters) as much as the product scope itself. Given the underlying objectives of the agreement and the nature/extent of the disciplines being contemplated (see below), we need to consider what, if any, treatment under the agreement may be appropriate for subsidies that either are not tied expressly to the production or export of any product, or are tied exclusively to the production/export of a non-covered product, if such subsidies are nonetheless provided to a producer or exporter of a covered product. In much the same vein, there may need to be certain rules aimed at identifying and capturing subsidized products that have been altered or transformed in minor or cosmetic ways with the apparent aim of evading the agreement's disciplines.

4. *Scope of Subsidies Covered (and Nature of Discipline): The agreement could apply to subsidies particular to the steel industry, as well as generic subsidies where the steel industry or a steel firm was a beneficiary. Or, all generic subsidies could be banned in the case of steel.*

*All subsidies and related supports could be forbidden, except for those that were expressly permitted.*

*Alternatively, with a view towards structuring a solution within the existing WTO Subsidies Agreement, all subsidies could be prohibited, except for those that were demonstrated not to have adverse effects or be causing serious prejudice to the industries in participating economies, and those that were otherwise expressly permitted.*

US Position

SUMMARY: The United States believes that the basic discipline accorded by the agreement should be to establish a blanket prohibition on all subsidies that are specific to the steel industry, whether on a *de jure* or *de facto* basis, providing exceptions for certain narrowly articulated forms of assistance that would facilitate the permanent closure of uneconomic steelmaking capacity (as well as for the "safe harbours" for certain specific practices provided for in Annex I to the WTO Subsidies Agreement).

DISCUSSION: As a starting point, the United States believes we should generally frame our work in reference to the definition of a subsidy contained in Article 1 of the WTO Subsidies Agreement and the concept of specificity as set forth in Article 2 of that Agreement. This would obviously facilitate integration of the results of our work into the WTO at a later stage. Of equal importance, however, these definitions also provide useful and widely acceptable parameters for identifying and segregating generally distortive subsidy practices from measures that are not.

We concur that the most effective approach towards fixing a practical and workable discipline would probably be to establish a general rule prohibiting covered subsidies, and then to articulate carefully crafted exceptions to that general rule only for the particular subsidies that participants wish to permit. However, as to the question of what subsidies would be covered, we do not take the view that the coverage should extend to subsidies that are not specific to the steel industry (i.e. genuinely "generally available" subsidies). This would, admittedly, complicate the identification of prohibited subsidies, but we believe that distinguishing non-specific from steel-specific subsidies is justified on both economic and public policy grounds and that it outweighs other complications which would arise if virtually all subsidies to steel were to be prohibited.

Therefore, under this type of framework, subsidies that are provided exclusively, whether in law or in fact, to all or part of the steel industry within the jurisdiction of the subsidizing authority would be prohibited in their entirety. Subsidies that are provided in law or in fact to a broader yet still limited number of recipient firms or industries within the jurisdiction of the subsidizing authority would be prohibited only to the extent of their subsidization of any steel industry recipients. However,

subsidies that are not "specific" to all or part of the steel industry, even though steel firms may be beneficiaries among a diverse range of many other beneficiaries – i.e. "generally available" subsidies – would not be prohibited or otherwise addressed by the disciplines of the agreement. For example, this would (at least in conceptual terms) permit steel producers to use general infrastructure made available by public authorities within an economy or use certain neutrally fashioned tax provisions, such as an R&D or investment tax credit that has been enacted for use by all productive enterprises in order to stimulate broad economic growth.[1]

As regards the issue of "related supports," while our work in the DSG has periodically referred to this term, we have not yet arrived at a precise and commonly acceptable understanding of the measures encompassed by it. In light of that fact, we should not necessarily assume that all related supports would fall within the WTO definition of a subsidy. Therefore, in addition to the blanket prohibition that would be associated with the WTO definition of a "specific subsidy," we may also want to consider the possibility of a definitive list of specific measures and practices that would be banned based on our collective agreement concerning their distortive nature. That list would be considered as part of the overall subsidies agreement, but if necessary we could hedge on the question of whether the measures qualify, strictly speaking, as subsidies within the meaning of the agreement and the WTO Subsidies Agreement, if that nuance was needed to reassure certain participants.

5. *Scope of Permitted Supports: Consideration could be given to permitting the following types of support:*

- *Certain support for redundant and retired workers affected by permanent plant closures;*
- *Certain time-limited aid to facilitate the privatization of state-owned facilities;*
- *Certain environmental assistance;*
- *Certain support for research and development*

US Position

SUMMARY: The United States could consider supporting certain carefully circumscribed exceptions from the prohibition, in order to allow governments to provide limited assistance to steel firms to help absorb certain dismantlement, labour and environmental remediation costs specifically linked to the permanent closure of capacity.

DISCUSSION: Given the extent of excess, inefficient steelmaking capacity which exists in the world, the United States is willing to consider an agreement which permits governments to offer limited and carefully regulated types of subsidization that would facilitate the genuine closure of such capacity. To be acceptable, these exceptions would need to be tightly structured in order to avoid the indirect subsidization of productive activities and to minimize further distortion of international steel markets. To achieve this, there should be limitations on the types of closure costs to be covered, limitations on the extent to which such costs would be subsidized and multilateral surveillance to verify compliance with the terms and conditions of the assistance, including with respect to the disposition of the facility to be closed. Violations of such terms and conditions could be subject to a subsidy payback requirement and/or the withdrawal of trade concessions by other parties.

The scope of permitted supports should be limited to only those forms of assistance which directly and genuinely facilitate capacity closure. As a result, we do not believe that subsidies provided expressly to facilitate privatization of state-owned facilities or to support research and development activity should be permitted. To the extent that privatization is to be encouraged,

[1] Nothing in this conceptual framework is intended to disturb the terms of Annex I to the WTO Subsidies Agreement which sets forth specific rules defining certain types of prohibited export subsidy practices and "safe harbours" for other practices.

however, we might consider privatization to be a requirement for any state-owned firm to qualify for permissible capacity closure assistance. This would avoid the undesirable practice of governments using subsidies merely to make uneconomic facilities more attractive for private ownership, and yet it could still encourage both capacity closure and the exit of governments from the steel business.

As a final comment, it bears noting that the characterization of a subsidy as "permissible" does not, *ipso facto*, mean that the subsidy would also be non-countervailable under countervailing duty law or non-actionable in multilateral dispute settlement. That is a separate question to be settled, and the establishment of terms designed to limit the aid to specific closure costs does not necessarily render it non-distortive. The United States believes that parties' rights to eliminate or offset the effects of distortive subsidies – subject, of course, to the terms and conditions imposed upon those rights by WTO rules – is not something which can or should be readily discounted. Moreover, subjecting permissible aid to potential WTO or CVD challenge could help to ensure that such exemptions are not abused or do not contribute unduly to further distortions in the international steel market.

6. *Special and Differential Treatment: Should consideration be given to special and differential treatment for transition and/or developing economies and, if so, should such treatment be different from that already provided for in WTO agreements?*

US Position

SUMMARY: In considering the possibility of special and differential treatment, the United States believes that it is first important to determine the basic framework of rules and disciplines, and then to determine whether any party has a legitimate problem conforming to those rules and disciplines due to real constraints related to underdevelopment or the process of transitioning from a centrally planned to a market economy.

DISCUSSION: The United States understands the importance which many participants attach to the principle of "special and differential treatment," and it would certainly be our view that a steel subsidies agreement should be consistent with and reinforce policies which promote sound economic development and market economy reforms. In that regard, it should be noted that the principal underlying objective of this agreement, *viz.*, the elimination of virtually all distortive subsidization in the steel sector, serves the interests of both developing and transition economy countries, whether from their perspective as steel producers and traders wishing to compete on a level playing field, or from their perspective as governments wishing to support economic growth without distorting the internal allocation of resources or overburdening the public purse.

Therefore, in the view of the United States, our efforts are best devoted first to obtaining an ambitious and workable set of disciplines governing subsidies specific to the steel industry. Once the baseline has been established, we will be better positioned to determine both the needs and constraints of developing and transitional economy countries, as well as whether/how it might be possible to address them in a manner consistent with the underlying objectives of the agreement.

7. *Needs of Developing Economies: Other than special and differential treatment, how could/should the needs of developing economies be reflected?*

US Position

SUMMARY: The United States considers that it is difficult to propose an answer to such a question in the abstract. It would first be necessary to learn and understand the specific needs that are perceived to be at issue in the particular context of steel and the rules and disciplines that will be developed.

DISCUSSION: The United States would be happy to participate in a discussion about the specific needs of developing economies, but to be meaningful, that discussion must focus on the concrete needs of specific countries that arise in the context of steel and in relation to the rules and disciplines under consideration. We note in this context that the Capacity Working Group has been mandated to evaluate the feasibility of options for helping to facilitate plant closures, which may provide a vehicle for identifying and addressing certain developing country and transition economy needs.

8. *Pre-Notification: Participants could be required to notify other participants of their intent to grant or alter allowed steel subsidies, and they could commit to refrain from putting any new or altered subsidies into effect until the other participants had been notified and had been provided with an opportunity to consult.*

US Position

SUMMARY: The United States believes that it is both unnecessary and cumbersome to establish a combined notification/consultation requirement that would apply prior to the introduction of a permissible subsidy.

DISCUSSION: We are sympathetic to the motivations for suggesting that, in order for a subsidy to be "cleared" as legitimately permissible, it should first be notified, reviewed by other parties and subject to possible consultation with other parties. We are concerned, however, that what sounds appealing in the abstract will quickly become untenable in its application. First, domestic legal and constitutional requirements will vary significantly from one party to the next, and it could prove quite difficult to harmonize such requirements with separate multilateral procedures if we consider that one feature of such an arrangement would be the delay in implementation of duly enacted legislation. At a minimum, such provisions could necessitate far more sweeping and radical changes to domestic legal systems than might be initially imagined. Moreover, in light of the number of parties that we expect/hope will become signatories to this agreement, such a pre-notification and approval obligation could quickly prove to be unwieldy. These types of "efficiency" considerations are magnified when one considers that the difference in status at issue is not actionability versus non-actionability, as it was with the pre-notification rules of the WTO Subsidies Agreement for "green light" subsidies (which, it should be noted, were never tested in practice), but rather whether the subsidy is permitted or prohibited. This kind of system may work effectively enough within a constitutional structure already involving significant and extensive economic, political and legal integration, but no such structure will co-exist with the prospective steel subsidies agreement.

While the timing of notifications and consultation rights is an important issue, of equal if not greater importance is the quality of the notification in terms of whether it will permit other parties to understand clearly the operation and effect of the subsidy. In our view, therefore, our efforts would be better spent ensuring that notifications are fully informative once a subsidy is introduced, instead of requiring notification prior to the subsidy's introduction. (In many circumstances, it may not even be possible to clearly understand the impact and operation of a subsidy until after its introduction.) Prompt notification following introduction should be required, in addition to annual comprehensive notifications of all permissible steel subsidies being applied by a party. Moreover, consultation rights should be available at all times, whether to clarify reports about subsidies under consideration or to raise concerns about subsidies that are already in use.

9. *Enforcement of Principles and Rules and Remedies: The agreement could be enforced under the WTO's dispute settlement mechanism.*

*Beyond those currently available in WTO agreements, are there other remedies or enforcement mechanisms (such as payback) that could be considered in instances where participants provided banned subsidies to steel firms?*

US Position

SUMMARY: The United States generally supports use of WTO dispute settlement procedures but would like to encourage discussion among participants about additional enforcement tools.

DISCUSSION:

*Prohibited subsidies:* Our key objective in considering enforcement of any new agreement on subsidy disciplines for the steel sector is to ensure that expeditious and effective procedures are available for addressing any use of prohibited subsidies. We should aim for strong and effective rules that both dissuade governments from violating their commitments and address the distortive effects of prohibited subsidies until such time as their elimination can be secured.

(a) WTO procedures: For a number of reasons, the United States concurs that one appealing enforcement model is the customary procedures and standards of WTO dispute settlement. However, as is the case today with subsidies that are currently prohibited under the terms of the WTO Subsidies Agreement, this should be an expedited proceeding and should not require any demonstration either that a prohibited subsidy has caused an adverse trade effect or of the kind of adverse effect it has caused. All that should be at issue is whether a measure granted or maintained by a signatory conforms to the definition of a measure prohibited by the agreement.

We may want to consider developing specific enforcement tools as guidelines for a dispute settlement panel once a decision on the existence of a prohibited subsidy has been made. In addition to elimination of the subsidy in question, the concept of a subsidy "payback" provision, as suggested in the Secretariat's question, has already been adopted to some extent in WTO dispute settlement cases involving subsidies, such as the dispute concerning certain subsidies bestowed to Australia's automotive leather industry.

(b) Other measures: The above discussion concerns potential modifications in the current application of WTO dispute settlement for prohibited steel subsidies, but, as we have suggested, the United States also believes it would be appropriate to consider additional options for complementing the dispute settlement mechanism, such as through additional early international consultation, domestic countervailing duty remedy procedures, or other options, particularly where prohibited subsidies are at issue. It may even be useful to consider the possibility of expedited procedures and/or strengthened remedies in such circumstances, bearing in mind the importance of existing international obligations and recognizing that the swift elimination of the prohibited subsidy would be the preferred outcome. In any event, the interaction of domestic and international remedies should not result in dual penalties.

*Permissible subsidies:* For a subsidy that meets the terms and conditions set forth in the agreement that would render the measure permissible, if the permissible subsidy is determined to cause or to threaten an adverse trade effect, the subsidizing signatory could still be obligated to

withdraw or adjust the subsidy in order to remove the adverse effect. To the extent that permissible subsidies are left actionable for purposes of WTO dispute settlement, they should also remain countervailable under countervailing duty law.

Expedited procedures might also be considered for addressing any failure to implement the measures recommended through the dispute settlement process with respect to either prohibited or permissible-yet-actionable subsidies.

10. *Surveillance: Consideration could be given to the maintenance of a group to oversee, examine subsidy-related initiatives taken in the steel area, and to review "pre-notifications". The group could include industry experts as well as government officials and other outside expertise.*

US Position

SUMMARY: The United States supports the establishment of a committee of all signatory parties to oversee implementation of the agreement and provide a forum for clarifying and addressing issues relevant to the application and objectives of the agreement.

DISCUSSION: We agree on the need for a committee of the parties to provide oversight with respect to the implementation of new disciplines, and a setting in which to discuss relevant matters of mutual interest and concern regarding such implementation and fulfilling the objectives of the agreement. If these new rules and disciplines are, ultimately, subsumed into a broader WTO agreement, such as the Subsidies Agreement, then the committee would presumably exist as a matter of course. If the agreement were to remain a sectoral, stand-alone instrument, then a committee should be established and, in those circumstances, might be charged with additional responsibilities that are of particular relevance or benefit to the steel sector. In general terms, the committee should serve as a vehicle for multilateral review of domestic legislative changes made to conform to the agreement's obligations and of notifications of subsidies falling within the purview of the agreement. (However, for the reasons described above, we do not favor using this committee to review any sort of "pre-notifications" of subsidies.)

We also believe that, in general, the committee should be intergovernmental in nature, normally excluding the direct participation of outside parties. In that the agreement would be formal and legally binding, it is appropriately within the province of governments to ensure its effective administration. Moreover, to the extent that the proper functioning of the committee or any subsidiary bodies would necessitate dissemination, review or discussion of information that any participating party would consider sensitive (including with respect to any review of notifications or discussion of disputes), the full participation of any non-governmental entity could further complicate or impede such activities. For these reasons, while we consider it critical that the committee have available the option of organizing – with appropriate safeguards – special *ad hoc* meetings with outside parties (including industry representatives) in order to benefit from their advice or expertise on particular matters, regular " membership" on the committee should be reserved for governments alone.

11. *Critical Mass of Participants: Which economies would have to participate in an agreement to make it acceptable/viable?*

US Position

SUMMARY: The United States considers it important that all major steel-producing countries participate in the agreement.

DISCUSSION: Insofar as the results of this work will produce an agreement of clear benefit to all significant steel-producing countries, we hope and expect that all such countries will ultimately become party to it. Moreover, because any such agreement will work most effectively when all major steel-producing countries are signatories, we collectively have an important interest in ensuring that all those who have participated in this High-Level Process remain a part of the result. We recognize that certain participants in the High-Level Process are not yet Members of the WTO, but those participants are both WTO observers and in the process of negotiating agreements of accession with the WTO membership. Whereas the timing of their accessions may be difficult to predict, we also don't know when any strengthened steel subsidy disciplines might enter into force. Ultimately, we don't believe that there are any insuperable impediments to ensuring that all OECD Steel Process participants can become parties to the final package of disciplines.

As for other WTO implications of this question, most agreements within the WTO are part of the single undertaking. That said, some agreements that are largely hold-overs from the pre-WTO, Tokyo Round era, such as the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement, remain plurilateral in nature, i.e. their membership consists of a subset of all WTO Members. In addition, certain special market access agreements negotiated since the inception of the WTO have entered into force only when a "critical mass" of participants representing a minimum percentage of world production or trade in the product concerned have joined. The Information Technology Agreement (ITA) negotiated at the 1996 WTO Ministerial in Singapore is an example of such an agreement, and Members have continued to sign on to the ITA over time. To the extent that one theory behind these "plurilateral models" is that there usually is a special, reciprocal benefit which only membership confers, it may be useful for us to consider the possibility and feasibility of according certain benefits to one another which outside parties may not enjoy. It would, of course, be necessary that any such features be consistent with WTO rules designed to ensure general respect for the principle of non-discrimination. As the Capacity Working Group undertakes its study of options aimed at facilitating plant closure, both it and the Disciplines Study Group may want to consider the implications of the study's conclusions for this question.

12. *Existing Programmes: How long would existing programmes be allowed to remain in place once an agreement came into force?*

US Position

SUMMARY: The United States supports allowing parties a reasonable but not unduly long period of time to abolish their inconsistent subsidy programmes. We also believe it is worth considering the scope for carefully crafted "grandfather" provisions for individual subsidies granted prior to entry into force of the agreement, but under which benefits are still being paid or might be allocated into the future.

DISCUSSION: While we all might wish to see distortive subsidies terminated immediately, particularly given the history and magnitude of this problem in the steel sector, we need to be realistic about the time it takes to repeal legislation and revoke decrees in a manner which respects the requirements of good governance and due process. Therefore, as regards subsidy programmes, parties should be permitted a reasonable period of time from entry into force of the agreement to come into conformity with their obligations concerning prohibited measures.

The WTO Subsidies Agreement allowed WTO Members three years to abolish or amend subsidy programmes that would be prohibited by the terms of the agreement, but afforded only 90 days for Members to come forward and identify the relevant measures via notification. For purposes of a steel subsidies agreement, we will likely want to shorten the period allowed to come into conformity, but slightly lengthen the period in which such measures should be notified. Another example which may be instructive is that of WTO dispute settlement, where the baseline assumption

for setting a "reasonable period of time" for coming into conformity with an adverse panel ruling is 15 months from the date of adoption of the final decision. On the one hand, we can already perceive in rough terms today the scope of the prohibition which an agreement would produce, and can begin immediately to work within our own jurisdictions with that objective in mind. On the other hand, none of us will know the precise outlines of the prohibition until an agreement is concluded. The period selected must balance those two realities, and should probably be no longer than 18 months.

As for individual subsidies or subsidy "packages" bestowed prior to entry into force of the agreement, the benefits of which are being paid or might be allocated into the period following entry into force of the agreement, these types of situations do not seem to lend themselves readily to transitional phase-out arrangements. In these circumstances, it may be appropriate to consider some sort of grandfather clause that is subject to strict notification and surveillance requirements to ensure that the terms of the subsidization are fully transparent, and that the subsidies are neither extended nor expanded.

13. *Duration of the Agreement: How should the duration of the agreement be specified? Should review periods be established?*

US Position

SUMMARY: The United States believes that the agreement should not have a specified termination date.

DISCUSSION: Given the enduring nature of the problems that have led to this agreement, we fail to see a need for establishing a particular period of duration. The disciplines which it would establish will be needed for the foreseeable future, and are not inconsistent with the general direction in which multilateral subsidy disciplines should be directed. It may, however, be useful to incorporate provisions which would automatically provide the parties an opportunity to assess on a periodic basis how well the agreement is functioning.

14. *Accession and Withdrawal: How could accession and withdrawal actions be handled?*

US Position

SUMMARY: The United States believes that, however accession and withdrawal provisions are structured, they must take account of the fact that the functioning of the agreement is tied, at least in part, to the participation of most if not all of the world's major steel-producing countries.

DISCUSSION: The United States does not, at present, hold particularly strong views on this question and would recommend that the Disciplines Study Group, through the good offices of the Secretariat, seek information about how such provisions are fashioned for other international trade instruments. The one consideration that strikes us initially as being deserving of special attention would be the circumstances under which the agreement as a whole might lapse upon the withdrawal of (a) certain part(y)(ies).

15. *Multilateral Institutions: How might the support provided by multilateral institutions to the steel industry be addressed?*

US Position

SUMMARY: The United States does not believe that it would be appropriate or feasible for an agreement of this kind to discipline , or establish legal obligations affecting, the activities of international financial institutions (IFIs). However, we do support intensified contact and

coordination among participants in the OECD High-Level Process – backed by a collective, voluntary commitment – to oppose the use of IFI financing to increase global steelmaking capacity.

DISCUSSION: The agreement which we are contemplating would impose disciplines on subsidies and certain related supports offered by the signatory governments (or other covered authorities within their jurisdictions) with respect to enterprises or industries also within their jurisdiction. As a result, we don't believe that it can or should address the financing or activities of international financial institutions. That said, the Disciplines Study Group has identified and called attention to the problem that can sometimes arise when such institutions provide development assistance which contributes to the problem of excess global steelmaking capacity. As a result, we continue to believe that, as a separate exercise, participants in the OECD High-Level Process might profitably explore the extent to which they could jointly commit not to support the use of such financing when it would lead inappropriately to capacity expansion. In particular, such efforts could culminate in the announcement of "political commitments" on the part of all High-Level Process participants to oppose such financing. Although such commitments would not be legally binding, they could still serve as a useful public signal and point of leverage to secure greater discipline over the flow of international development aid to steel projects.

16. *Incentives and Free Riders: Are incentives needed to build sufficient support for a subsidy agreement?*

*What, if anything, could be done about free-riders (i.e., countries that do not join the agreement and would therefore be free to provide a wider range of government supports to their industries)?*

US Position

The United States recognizes that these are real issues and is continuing to consider them. To some extent, the views we expressed in reference to items 11 ("Critical Mass of Participants") and 14 ("Accession and Withdrawal") may also be relevant here, but additional thought and discussion is warranted, bearing in mind the role of participants' existing multilateral obligations.

17. *Industry Role: What roles could industry play in the development, implementation, surveillance and enforcement of a subsidies agreement?*

US Position

SUMMARY: The United States believes that special efforts should be made to find appropriate roles for industry to play in these areas, consistent with antitrust considerations and recognizing the fundamentally intergovernmental nature of the eventual agreement.

DISCUSSION: In some respects, we have already spoken to this issue in relation to item 10 ("Surveillance"). As we have stated from the beginning of the High-Level Process, we believe that input and support from industry has been and will continue to be critical to the success of our efforts. As a result, we will continue to seek advice from our own industry representatives, and continue to feel that it will be important to create opportunities for industry representatives to provide their input to us collectively as our work on an agreement proceeds. Once we have a better sense of what the agreement will look like in more relevant detail, we will be in a better position to reach judgments about how industry might be able to contribute to its effective implementation. We need to find practical means of tapping into their expertise and experience without transgressing important confidentiality and antitrust concerns.