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Negotiating Group on Rules

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SUBMISSION BY THE UNITED STATES

The following communication, dated 15 October 2002, has been received from the Permanent Mission of the United States.

The United States provides the attached paper for the information of other WTO Member delegations participating in the Rules Negotiating Group. The Doha Ministerial Declaration calls for negotiations on WTO Rules to clarify and improve disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, including disciplines on trade-distorting practices. The attached paper relates to this specific aspect of our negotiating mandate. It presents a number of ideas and recommendations for addressing trade- and market-distorting practices in the steel sector which, in the view of the United States, merit broader discussion and consideration in the Doha work programme. The United States recently submitted this paper to the Disciplines Study Group of the OECD High-Level Process on Steel Issues, and is now sharing it with this Group in the interests of transparency. We look forward to providing further information and background to other Members concerning this submission and the relevant work that has been under way in the OECD.

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Organisation de Coopération et de Développement Economiques
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DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY

OECD Special Meeting at High-Level on Steel Issues

ADDRESSING MARKET DISTORTIONS IN THE GLOBAL STEEL SECTOR
SUBMISSION BY THE UNITED STATES TO THE DISCIPLINES STUDY GROUP
12-13 September 2002

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ADDRESSING MARKET DISTORTIONS IN THE GLOBAL STEEL SECTOR

**Submission by the United States to the
Disciplines Study Group of the
OECD High-Level Process on Steel Issues**

Introduction

In September 2001, participants in the High-Level Group (HLG) agreed, *inter alia*, "to identify the principal economic, social and regulatory issues that are impeding, or could impede, closure/reduction of [economically unviable] capacity and consider policies to facilitate the reduction/closure of inefficient facilities via market forces". Subsequently, the HLG established the Disciplines Study Group (DSG) and requested that it:

- establish an inventory of measures that distort markets;
- examine which of the existing multilateral disciplines do not appear to be achieving the desired results in the case of steel and why;
- analyze areas where progress toward strengthening disciplines could be achieved;
- explore the scope for a political commitment by participants to voluntarily limit or, where possible, eliminate market-distorting government measures related to the steel industry, except for the purpose of facilitating closures; and
- develop options for the strengthening of disciplines on government interventions and other market distortions in steel, feeding the results, as appropriate, into wider-ranging discussions at the WTO.

Meaningful work has been pursued on all of the above elements of this mandate, and the Secretariat has produced an options paper for the September 12-13 DSG meeting (SG/STEEL/(2002)21) which extensively addresses these issues in an integrated fashion. The United States looks forward to a constructive exchange with other participants on the Secretariat's draft as a point of departure for preparing a report and recommendations for the HLG.

Noting that the HLG has pointed to the WTO as an appropriate setting for pursuing better disciplines on at least some of the market distortions affecting trade in and production of steel, and in view of the fact that the Doha work program is now under way, the United States believes participants should begin now to discuss more concretely how the results of our work could best be formulated into a coherent package and transmitted to appropriate fora for serious consideration and action. It is with that objective in mind that we offer the ideas and suggestions set forth in this paper.

Summary of Proposal

1. *Objectives of OECD Process*: To be effective, the OECD process need not address exhaustively each of the conditions, measures and practices that have contributed to steel market distortions and helped to create or perpetuate inefficient, excess steelmaking capacity. Instead, we should focus on two objectives:

Suggesting what general frameworks or approaches may be best suited for the kinds of disciplines most appropriate for steel, based on the work we have performed and discussions we have held.
Promoting the most effective disciplines for the steel sector without prejudging at this time how the disciplines should be codified or otherwise made effective.

2. *Scope of Disciplines*: We should address as many of the market-distorting practices as possible. Our initial aim should be to impose the strictest disciplines over those practices that are viewed as the most distortive, while seeking ways to encourage or facilitate market-driven adjustment. The issues identified to date fall into the following main categories:

Subsidies or those measures with a subsidy-like effect;
Other forms of official support;
Anticompetitive behavior;
Tariffs and other market access measures; and
Financial support for closure of inefficient capacity.

3. *Existing Fora for Negotiations*: Participants recognize that no single forum can adequately address the concerns identified and, therefore, agree to pursue an integrated approach to the issues in reference to work being done in – or within the competence of – the OECD, WTO and other fora, as appropriate.

4. *Coordination Across Fora and Disciplines*: It will be important to integrate the various elements of this initiative to give the overall agenda coherence. Participants in the High-Level process would, therefore, agree to create a "Steel Informal Group" (SIG) that would meet periodically to coordinate on matters relevant to steel. The SIG would not replace on-going activities (e.g., the OECD Steel Committee), but would provide an informal setting for participants to consult and strategize concerning their efforts to ensure that the goals of this initiative are being sufficiently and consistently addressed.

Specific Disciplines

The United States agrees with the Secretariat's observation that subsidies and related supports need to be among our core priorities. However, as noted above, we believe that the disciplines must extend beyond subsidies to address a broader range of distorting practices and measures. Given the different types of practices and the fact that the market-distorting nature of some of these practices may be circumstance-specific or less objectively identifiable, the particular disciplines to be established may also have to be less categorical and more conditional or prescriptive than in the case of subsidies. We should also be fashioning disciplines with the goal not only of preventing distortions, but also encouraging restructuring, rationalization and adjustment. In light of these considerations, the United States believes that a suitable model or framework for steel might include the following elements.

Subsidies: Participants would agree to prohibit substantially all subsidies to the steel sector except perhaps for assistance that is carefully circumscribed and specifically aimed at promoting capacity closure and facilitating worker adjustment and covering other social and environmental costs incidental to capacity closure.[1] Participants would work in the WTO and OECD to pursue effective oversight mechanisms to ensure that any such exceptions do not give rise to circumvention of the basic discipline intended here. Work in the WTO could involve, for example, an expansion of existing subsidies disciplines enforced through the WTO dispute settlement process. As an initial or complementary step, participants could also make certain subsidy-related commitments and agree to an OECD peer review mechanism to ensure compliance.

Other Forms of Official Support: Participants would agree that action is needed on a broad and varied range of practices covered by the OECD and WTO Agreements, as well as some where no disciplines currently exist. For example, the High Level Group may wish to commit on behalf of the participating governments: (i) to refrain from the use of export credits for steel plant and equipment in circumstances where there is substantial excess global steelmaking capacity; and (ii) not to support the extension of multilateral development bank financing for any proposed steel plant projects which would contribute to the expansion of global steel capacity. Other steps that might be taken in this area include:

- Addressing – perhaps through strengthened subsidies disciplines – preferential access to financing and steel production inputs, as well as circumstances in which governments absolve steel firms of generally applicable obligations;

- Addressing bankruptcy procedures and their implications for steel capacity reduction.

Anti-Competitive Conduct: Without prejudice to the ongoing work in the WTO regarding trade and competition, participants would agree that enhanced cooperation and, where appropriate, action by their respective competition/antitrust authorities is needed to ensure that anti-competitive conduct which can give rise to market distortions is properly countered, consistent with participants' own laws and policies. Therefore, participants could pledge to (i) vigorously enforce their competition laws and policies with respect to the steel sector (*i.e.*, producers, distributors, suppliers, and trading companies); (ii) assist those in need of technical assistance with respect to the establishment and application of a sound competition law and policy; and (iii) cooperate with one another in seeking correction of anti-competitive behavior having cross-border effects, including international cartel activity, through use of available consultation provisions and negative and positive comity instruments. The OECD's Committee on Competition Law and Policy and/or Joint Group on Trade and Competition might be invited to consider how they could contribute to this effort, *e.g.*, by including a special focus on developments in the steel sector within the context of ongoing or prospective peer reviews of members' competition laws and policies.

Tariffs and Other Market Access Measures: Participants would agree to pursue liberalization of market access in the steel sector aggressively as part of the Doha negotiations, not only to open up markets but also to reduce the scope for dumping out of sanctuary markets. As part of their contribution to the Doha outcome, participants that have not already done so would agree to join in the steel zero-for-zero tariff elimination initiative agreed in the Uruguay Round, as well as focus on non-tariff measures that impede full liberalization of this sector (*e.g.*, misuse of multilateral rules on customs valuation).

Trade Remedies: Negotiations are already under way as part of the Doha work program to clarify and improve certain WTO trade remedy rules, while preserving the basic concepts, principles and effectiveness of those rules. Trade remedies, such as antidumping, countervailing and safeguard

[1]The EU has had extensive experience in applying a state aids model of this kind; we should invite the EU and its member states to share with us the benefits and lessons of their own experience.

actions, are presently among the few tools available to deal with trade and market distortions. It is logical to assume that the use of these remedies would decline in conjunction with the elimination of inefficient excess capacity and distortive trade measures internationally. Indeed, those who wish to reduce the frequency of trade remedy actions can best achieve that goal by working to eliminate the distortions to which such actions respond. Trade remedy negotiators should, therefore, be afforded the opportunity as experts to sort out the issues in their own setting, while we reserve our own attention for the practices that contribute to the responsive use of these remedies in the first instance. Moreover, because not all market-distorting practices can be categorically or perfectly identified and eliminated, there will continue to be a need for recourse to trade remedies, even under the strictest of disciplinary regimes.

Improved Financial Support for the Closure of Inefficient Capacity: A credible model or framework for resolving the systemic and structural problems of the steel industry cannot rest on the development of trade and market disciplines alone. There is a concomitant need for creative approaches to address certain countries' lack of financial resources to cover the costs of capacity closure. We need to provide responsible incentives in order to facilitate and encourage such adjustment as a complement to the discontinuation of practices that have helped to keep uneconomic capacity afloat. Consideration should be given, therefore, to how government or private sector mechanisms might be designed to offer financial support, in conjunction with country requests for support from international financial institutions, for the social costs of closure of uneconomic capacity in transition and developing economy countries.

Conclusion

The United States offers the above suggestions with the recognition that they do not answer all of the difficult questions that must be faced if a permanent and effective solution to steel's structural problems is to be found. We do hope, however, that they prompt serious consideration by and active exchanges with our partners in the High-Level process, and provide a useful starting point for formulating a sound set of conclusions and recommendations that will be forwarded to the HLG. We welcome others' questions and reactions, as well as the constructive cooperation that will be required to successfully bring our collective efforts in this process to the next important stage.