



DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY

OECD Special Meeting at High-Level on Steel Issues

**ELEMENTS OF AN AGREEMENT TO REDUCE OR ELIMINATE TRADE-DISTORTING
SUBSIDIES IN STEEL**

Draft text – Complete agreement

Attached is an updated version of the draft steel agreement, as of 23 April 2004. Technical issues and comments are included as an "Attachment".

Efforts have been made to use brackets sparingly in the text so as to enhance readability. The lack of brackets does not, therefore, necessarily mean that the text concerned has been agreed on.

Please note that the Agreement text is identical to that contained in Working Paper 76. The "Technical comments and issues" section is essentially unchanged from WP76, except for Article 11, where an additional point has been added.

Wolfgang Hübner, Head of Division of Transport and Steel Unit
Tel: +33 1 45 24 91 32 Fax: +33 1 44 30 62 63 E-mail: wolfgang.hubner@oecd.org

JT00163971

**ELEMENTS OF AN AGREEMENT TO REDUCE OR ELIMINATE TRADE-DISTORTING
SUBSIDIES IN STEEL**

DRAFT TEXT – COMPLETE AGREEMENT

PREAMBLE

PART I: GENERAL PROVISION

Article 1

Scope

PART II: PROHIBITED SUBSIDIES AND EXCEPTIONS

Article 2

Prohibited Subsidies

Article 3

Exceptions

**PART III: [PREFERENTIAL TREATMENT/DEVELOPING ECONOMIES] AND
ECONOMIES IN TRANSITION**

Article 4

[Preferential Treatment/Developing Economies] [and Economies in Transition]

[Article 5]

[...]

PART IV: NOTIFICATION AND SURVEILLANCE

Article 6

Committee on Steel

Article 7

Notifications and Requests for Information

Article 8

Review of Measures

PART V: REMEDIES AND COUNTERVAILING MEASURES

Article 9

Dispute Settlement and Remedies

Article 10

[Antidumping and] Countervailing Measures

PART VI: TRANSITIONAL MEASURES

Article 11

Existing Measures

PART VII: FINAL CLAUSES

Article 12

Reservations

Article 13

Review of Agreement

Article 14

Signature, Acceptance and Accession

Article 15

Entry into Force

Article 16

Withdrawal

Article 17

Transition to the WTO

Article 18

Other Final Provision(s)

Article 19

Depositary

Note - Numeric figures and the like which are subject to negotiation have been replaced by “[...]” throughout the text.

PREAMBLE

The Parties to this Agreement

Recognising that certain subsidies [and other support measures] granted by governments at any level or by any public body have a distorting effect on international trade and competition in steel products, and that they have been contributing to excess capacity and the maintenance of inefficient facilities world-wide, causing major distortions in the market;

Recognising the need to eliminate those subsidies [and supports] which contribute to excess capacity and the maintenance of inefficient facilities;

Acknowledging the existence in developing economies of deficiencies in infrastructures, capital markets and other systemic deficiencies which have given rise to special and differential treatment [as recognised in Article 27 and Annex VII of the ASCM Agreement];

Recognising the distorting effects that trade remedies could have on steel markets, and the need to address steel-specific issues related to these remedies at a later stage;

Taking into account their rights and obligations under the WTO agreements;

Seeking, in a manner which is consistent with the general framework of the WTO Agreement on Subsidies and Countervailing Measures (ASCM), to strengthen disciplines on such subsidies [and support measures] in order to facilitate market-driven adjustment in the steel industry world-wide;

Agree as follows:

PART I: GENERAL PROVISION

Article 1

Scope

For the purpose of this Agreement, “steel product” means any item classified under headings [72.06 to 72.29], [73.01 to 73.02] and [73.04 to 73.06] of the Harmonized Commodity Description and Coding System (HS).

PART II: PROHOBITED SUBSIDIES AND EXCEPTIONS

Article 2

Prohibited Subsidies

2.1 Except as otherwise provided in this Agreement, and without prejudice to any prohibition provided in the WTO Agreement on Subsidies and Countervailing Measures,^{1[2]} any subsidy, within the

¹ Nothing in this Agreement shall be construed to alter the terms of Annex I to the WTO ASCM.

² Tax exemptions for the consumption of coking coal and other coal for chemical usage, including a usage to de-oxide iron ore, from general taxation on fuel usage or from general taxation for environmental purpose shall not be prohibited.]

meaning of paragraph 1 of Article 1 of the ASCM, which is specific, within the meaning of Article 2 of that Agreement, shall be prohibited to the extent that ...

Five possibilities have been considered::

- (1) the benefit of the subsidy is conferred [directly or indirectly] to *the manufacture* of steel products;
- (2) the benefit of the subsidy is conferred [directly or indirectly] to *a manufacturer* of steel products;
- (3) the benefit of the subsidy is conferred [directly or indirectly] to steel products;
- (4) the subsidy is granted to ... ;
- (5) the benefit of the financial contribution is conferred or is passed through to

2.2 No subsidies referred to in paragraph 1 shall be granted or maintained at any level of government or by any public body within the territory of a Party.

[2.3 Specific subsidies for improving the infrastructure outside the premises of an existing {or foreseen} steel facility are not prohibited.]

[2.4 Governmental financial contributions granted prior to or as part of a privatisation process shall be deemed not to confer a benefit unless it can be demonstrated that any of the following conditions are not fulfilled:

- a) the privatisation sales transaction is at arm's length and at fair market value;
- b) the procedures followed for the privatisation are transparent, objective and not unduly restrictive; and
- c) the result of the privatisation transaction ensures that the government or any other public body no longer has official or effective control of the enterprise.

A Party may, in this respect, notify under Article 8 of this Agreement any privatisation that may have occurred before or which would take place after the entry into force of this Agreement. For such privatisation, Articles 7, 8 and 9 shall apply.]

Article 3

Exceptions

Part 1: Permanent Closure

[Note: It was generally agreed that the provisions relating to permanent closures would, as a "working hypothesis", be treated separately from other exceptions ... at least for the time being.]

3.1 Notwithstanding Article 2, a subsidy for the permanent closure of a facility that manufactures steel products shall not be prohibited under this Agreement, provided that:

- [(a) the closure results in a reduction {in rolling capacity and/or} in the capacity to manufacture crude steel; and]
- (b) the subsidy is:
 - (1) granted in accordance with criteria³ which are spelled out in laws, regulations, directives, administrative acts, programmes, or other official instruments of the government or public body which grants it; and
 - (2) granted, in the case of a total closure, in accordance with the terms and conditions set forth in paragraphs 2 and 4 to 7, or, in the case of a partial closure, in accordance with the terms and conditions set forth in paragraphs 3 to 7; and
 - (3) duly notified in accordance with this Agreement.

3.2 *Total closure.*— In the case of a permanent closure of [any and] all the facilities used to manufacture steel products by an enterprise and its affiliates in the territory of a Party, the following terms and conditions shall apply to a subsidy granted by a government or by any public body in that territory:

- [(a) the facilities being closed shall have been used to manufacture steel products {and crude steel} within the [...] years prior to the granting of the subsidy;]
- (b) the grant of the subsidy shall be made contingent upon dismantling the facilities being closed and scrapping all their equipment for manufacturing steel products, including [all][rolling and] crude steelmaking equipment⁴, or otherwise rendering such equipment permanently unusable for manufacturing steel products [and crude steel]⁵;
- (c) the subsidy concerned shall be limited to [...] percent of the net cost of:
 - (1) dismantling the facilities being closed and scrapping their equipment for manufacturing steel products, or otherwise rendering such equipment permanently unusable for manufacturing steel products [and crude steel]; and
 - (2) meeting the legal environmental obligations associated with the closure;
- (d) the enterprise and its affiliates shall not resume production of steel products in the territory of the Party where the closure takes place within [...] years of having ceased such production; and
- [(e) in the event the enterprise or any of its affiliates acquires or becomes affiliated with, or part of, another entity{, including through merger or acquisition,} the resulting entity shall not increase its capacity to manufacture steel products {and crude steel} in the territory of the Party where the closure takes place, within {...} years of the cessation of production under this paragraph.]

³ The use of the term “criteria” is not intended to suggest that Parties must articulate terms or conditions beyond those set forth in the relevant provisions of this Article.

⁴ Crude steelmaking equipment [includes][is] the equipment used to produce [pig iron] [,coke] [and] molten steel.

⁵ This would not restrict the sale and reuse of multi-use equipment for purposes not related to the manufacture of steel products.

3.3 *Partial closure.*— In the case of a permanent closure of one or more, but not all, facilities used to manufacture steel products [*and crude steel*] by an enterprise and its affiliates in the territory of a Party, the following terms and conditions shall apply to a subsidy granted by a government or by any public body in that territory:

- [(a) the facility or facilities being closed shall have been used to manufacture steel products {*and crude steel*} within the [...] years prior to the granting of the subsidy;]
- (b) the grant of the subsidy shall be made contingent upon dismantling the facility or facilities being closed and scrapping their equipment to manufacture steel products, or otherwise rendering such equipment permanently unusable for manufacturing steel products[*and crude steel*];
- (c) the subsidy concerned shall be limited to [...] percent of the net cost of:
 - (1) dismantling the facilities being closed and scrapping their equipment for manufacturing steel products, or otherwise rendering such equipment permanently unusable for manufacturing steel products [*and crude steel*]; and
 - (2) meeting the legal environmental obligations associated with the closure;
- (d) the closure shall result in a reduction in the capacity of the enterprise and its affiliates to manufacture steel products in the territory of the Party where the closure takes place, [and shall include a reduction {of at least [...] percent } in the capacity to manufacture crude steel,] and [no increase to that capacity shall occur within a period of {...} years after the closure][, within a period of {...} years after the closure, no increase shall occur in the capacity to produce steel products identical or similar to those formerly produced in the equipment that was scrapped or otherwise rendered permanently unusable]; and
- [(e) in the event the enterprise or any of its affiliates acquires or becomes affiliated with, or part of, another entity{, including through merger or acquisition,} the resulting entity shall be obliged not to increase its capacity to manufacture steel products {*and crude steel*} in the territory of the Party where the closure takes place, within [...] years of the cessation of production under this paragraph]

3.4 The dismantling of the facility or facilities being closed and the scrapping of their equipment to manufacture steel products, or otherwise rendering such equipment permanently unusable for manufacturing steel products [*and crude steel*], shall [be completed] within [...] months of:

Option A

- (a) the notification of the subsidy to the Committee, in accordance with Article 7; or
- (b) the authorisation of the subsidy by the Committee, in accordance with Article 8.

Option B

the grant of the subsidy [apportioned as the closure proceeds][, or any part thereof.]

3.5 A subsidy granted under this Article shall be subject to an independent audit in accordance with the generally accepted accounting principles of the Party granting the subsidy to ensure that the subsidy has been used in accordance with the terms and conditions set for in this Article. [Independent audit shall provide rational separation of the rights and liabilities of the enterprise subject to partial closure between the capacity to be closed and the capacity to continue production.] The results of such an audit shall be provided to the Committee by the Party concerned within [...] months following the scrapping of the equipment subject to the closure or the rendering of such equipment permanently unusable for manufacturing steel products [*and crude steel*].

3.6 A subsidy, to an enterprise, that is tied to assistance provided to workers made redundant or accepting early retirement as a result of a permanent closure under this Article shall not be prohibited, provided that:

(a) the amount of any subsidies conferred directly or indirectly through such assistance does not exceed [...] percent of the total legal obligations of the enterprise towards the workers; and

[(b) the {subsidy}{assistance} is:

(1) {directed}{or}{provided directly} to the workers; and

(2) {is limited to the accrued unpaid wages over the twelve-month period preceding the closure.}]

[3.7 The law, regulation or order of a Party related to a permanent closure shall include a specific provision for reclaiming {the entire}{a proportional} amount of the subsidy, together with interest, in the event the manufacturer of steel products that received the subsidy or any of its affiliates either fails to cease production or initiates or increases, directly or indirectly, the production of steel products prior to end of the relevant periods specified in this Article.]

Part 2: Other Exceptions

[Note: The text on privatisation that is contained in Article 4bis and 4quater would be moved to this Article, if it is decided to make the exception generally available to all Parties.]

3.8 Without prejudice to any prohibition provided in the ASCM, a subsidy shall not be subject to the prohibition set forth in Article 2, provided that:

(a) the subsidy:

(1) fulfils the terms and conditions laid down in paragraphs 9 to 17;

[(2) does not lead to the addition of any new capacity;]

(3) is granted according to criteria which are spelled out in laws, regulations or other official documents of the Party which grants it;

(4) is duly notified in accordance with this Agreement; and

[(b) the subsidies do not exceed a cumulative amount calculated in accordance with Annex {...}.]

3.9 Natural disaster

Option 1: Assistance to [make good] [indemnify] the damage caused by natural disasters [or exceptional occurrences] shall not be prohibited under this Agreement [provided that the natural disaster risk was not commercially insurable]. Eligible costs shall be confined strictly to costs necessary to [make good] [indemnify] the damage and shall not lead to [overcompensation][compensation which exceeds the market value of the damaged mill (or equipment)].

Option 2: A Party may grant a subsidy which is necessary to make good the damage caused to a facility that manufactures steel products by a natural disaster [or exceptional occurrences], provided that:

- (a) manufacturing operations have been severely interrupted as a result of the disaster for at least [...] days/weeks;
- (b) the subsidy is used to [compensate exclusively for damages to] [repair or replace] affected existing plant and machinery [,][and] does not result in a significant enhancement in the competitiveness of a facility [and does not result in compensation which exceeds the market value of the damaged mill (or equipment)];
- (c) the subsidy is proportionate to the damage incurred and is maintained only as long as and to the extent necessary to address such disaster; and
- (d) the natural disaster risk was not [commercially] insurable [at reasonable cost].

3.10 Research and development

Subsidies for research and development purposes⁶ [and technological upgrading of⁷ steel products] shall not be prohibited, provided that:

- (a) the subsidies cover not more than:
 - (1) [...] percent of the costs of industrial research⁸; or
 - (2) [...] percent of the costs of pre-competitive development activity;^{9, 10} [or]

⁶ The provisions of this Agreement do not apply to fundamental research activities independently conducted by higher education or research establishments. The term "fundamental research" means an enlargement of general scientific and technical knowledge not linked to industrial or commercial objectives.

⁷ The term "technological upgrading" means the upgrading aimed at developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services, including enhancing energy efficiency, reducing energy consumption and improving product performance.

⁸ The term "industrial research" means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

⁹ The term "pre-competitive development activity" means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot

- (3) [...] percent of the costs of technological upgrading;

[(b) the subsidies are limited to [...] over a [...] year period to any single manufacturer and its affiliates;]

[(c) the results of the research are made publicly available promptly in accordance with intellectual property laws]; and

(d) eligible costs are limited exclusively to:

- (1) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);
- (2) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
- (3) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.
- (4) additional overhead costs incurred directly as a result of the research activity;
- (5) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity;

[(6) the costs of research, development and upgrading of the products, processes, technologies and equipment; and]

[(7) the costs of activities aimed at enhancing the performance of products and equipment to meet the requirements or standards set in national laws, regulations and other official documents including standards on work safety, energy consumption, product performance and technology.]

3.11 Environment

Subsidies shall not be prohibited if given for actions designed to remedy or prevent damage to our physical surroundings or natural resources or to encourage the efficient use of the resources, provided that they are [limited to {...} over a {...} year period to any single manufacturer and its affiliates and] are given:

- (a) for investments to [comply with or] improve on applicable compulsory environmental standards, provided that:

projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

¹⁰ In the case of programmes which span industrial research and pre-competitive development activity, the allowable level of subsidies shall not exceed the simple average of the allowable levels of subsidies applicable to the above two categories, calculated on the basis of all eligible costs as set forth in items (1) to [...] of this paragraph.

- (1) such subsidies are limited to [...] percent of the extra costs of the land, buildings, equipment and intangible assets necessary to meet the environmental objectives; and
 - (2) eligible costs are confined strictly to extra costs necessary to meet the environmental objectives¹¹ and are calculated net of the benefits accruing from [any increase in productivity,] cost savings engendered during the first [...] years of the life of the investment and additional ancillary production during that [...] -year period;
- (b) for investments in energy saving, provided that:
- (1) such subsidies are limited to [...] percent of the extra costs of the land, buildings, equipment and intangible assets necessary to meet the environmental objectives; and
 - (2) eligible costs are confined strictly to extra costs necessary to meet the environmental objectives and are calculated net of the benefits accruing from [any increase in productivity,] cost savings engendered during the first [...] years of the life of the investment and additional ancillary production during that [...] -year period;
- (c) for rehabilitation of polluted industrial sites, when the person responsible for the pollution is not identified or cannot be made to bear the cost, provided that such subsidies are limited to the costs of the work to repair the environmental damage less the increase in the value of the land;
- (d) for relocation of companies from urban areas where the change of location is dictated on environmental protection grounds and is ordered by administrative or judicial decision, provided that the subsidies are limited to the net costs of the relocation;
- (e) in the form of exemptions or reduction of taxes levied for reasons of environmental protection, such as an energy or CO₂ tax/levy[.], provided that such subsidies are limited in time to {...} years and are degressive, except that in particular circumstances where the company pays {a significant proportion}{at least [...] percent} of the national tax, this period may be {...} years and the exemption, can be renewed, and the subsidy need not be degressive.]
- (f) for the management of waste or in the energy saving field in order to improve on applicable compulsory standards, provided that:
- (1) the subsidies are limited to a [...] -year period and are degressive; and
 - (2) eligible costs shall be the costs necessary to compensate for extra production costs by comparison with the market price of the relevant products or services, or, in case of energy savings, the costs for the support for renewable energy sources while using market mechanisms such as green certificates.

3.12 Training

Subsidies for training shall not be prohibited provided that:

¹¹ The eligible cost would be the investment costs minus the costs of a technically comparable investment that does not though provide the same degree of environmental protection.

- (a) they not cover more than [...] percent of the costs of specific training¹², or [...] percent of the costs of general training¹³; and
- (b) eligible costs are limited exclusively to:
 - (1) trainers' personnel costs;
 - (2) trainers' and trainees' travel expenses;
 - (3) other current expenses such as materials and supplies;
 - (4) depreciation of tools and equipment, to the extent that they are used exclusively for the training project;
 - (5) cost of guidance and counselling services with regard to the training project; and
 - (6) trainees' personnel costs up to the amount of the total of the other eligible costs referred to in (1) to (5), provided that only the hours during which the trainees actually participate in the training, after deduction of any productive hours or of their equivalent can be taken into account.

3.13 Recruitment of disadvantaged or disabled workers

Subsidies schemes for the recruitment of disadvantaged¹⁴, and disabled workers¹⁵ shall not be prohibited, provided that the subsidies foreseen in these schemes do not exceed [...] percent of the wage costs over a period of [...] year following recruitment for disadvantaged workers, or [...] percent of those costs for disabled workers. Additional assistance might be granted to cover the additional costs of employment of disabled workers.

3.14 Small and medium sized enterprises

Subsidies to small and medium enterprises (SMEs) for investment, for consultancy, for participation in fairs, for the creation of employment or for complying with environmental standards shall not be prohibited, provided that the subsidies for:

- (a) the creation of employment do not exceed [...] percent of the wage costs over a period of [...] years created under the following conditions:

¹² Training involving tuition directly and principally applicable to the employee's present or future position in the assisted firm and providing qualifications which are not or only to a limited extent transferable to other firms or fields of work.

¹³ Training involving tuition which is not applicable only or principally to the employee's present or future position in the assisted firm, but which provides qualifications that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee.

¹⁴ Any person who belongs to a category which has difficulty entering the labour market without assistance, for instance, long-term unemployed people, people under [...] who have not previously obtained a first regular paid employment, people older than [...] who do not have a job.

¹⁵ Workers recognised as disabled under national law or having a recognised, serious, physical, mental or psychological impairment.

- (1) the employment created must represent a net increase in the number of employees, both in the establishment and in the enterprise concerned, compared with the average over the past [...] months;
 - (2) the employment created shall be maintained for a minimum period of [...] years; and
 - (3) the new workers employed as a result of the creation of employment must have never had a job or have lost or be losing their previous job;
- (b) investment in tangible or intangible assets do not exceed [...] percent of the investment costs and that the total aid does not exceed [...] or the investment costs do not exceed [...], in which cases no such subsidies shall be allowed;
 - (c) services provided by outside consultants do not exceed [...] percent of the costs of such services and the services concerned shall not be a continuous or periodic activity nor relate to the enterprise's usual operating expenditure, such as routine tax consultancy services, regular legal services or advertising;
 - (d) participation in fairs and exhibitions do not exceed [...] percent of the additional costs incurred for renting, setting up and running the stand; and
 - (e) investments to adapt to new compulsory environmental standards, provided that the eligible costs do not exceed [...] percent of the investments costs and are made available only during a period of [...] years from the adoption of the new standards.

3.15 De minimis subsidies

Subsidies granted to any one steel manufacturer not exceeding [...] over any period of [...] years shall not be prohibited, irrespective of the form of the subsidies or the objective pursued.

3.16 Disadvantaged regions

Subsidies to disadvantaged regions¹⁶ shall not be prohibited.

PART III: [PREFERENTIAL TREATMENT/DEVELOPING ECONOMIES] AND ECONOMIES IN TRANSITION

Article 4

[Preferential Treatment/Developing Economies] [and Economies in Transition]

[Note: It was decided to focus on developing the “cap” and “list” approaches, with the understanding that an “amalgamated” approach could be fashioned from the two at a later stage, if there

¹⁶ Defined as per Annex y.

was interest in doing so. Provisions that might apply exclusively to economies in transition – which were not discussed at the April meeting – have been retained in this text.]

Cap Approach

[Preferential Treatment][Special and Differential Treatment for Developing Economies]

4.1. *Option 1:* This Article shall apply to [developing economy] Parties [listed in Annex I].

Option 2: This Article shall apply to [developing economy] Parties listed in Annex I [whose GDP per capita does not exceed {...}] [and whose share of world crude steel production does not exceed {...}] [and whose crude steel production per capita does not exceed {...}] [and whose steel consumption per capita does not exceed {...}] [and whose share of world steel exports does not exceed {...}].

Option 3: This Article shall apply to those Parties listed in Annex I, which, for the purpose of this Agreement, shall be deemed to be developing economies [or economies in transition].

[4.2 This Article shall cease to apply to [developing economy] Parties [whose GDP per capita exceeds {...}] [and] [or] [whose share of world crude steel production exceeds {...}] [whose crude steel production per capita exceeds {...}] [whose steel consumption per capita exceeds {...}] [whose share of world steel exports exceeds {...}].]

4.3 In addition to subsidies which may be granted in accordance with Article 3, and without prejudice to any prohibition provided in the ASCM, a Party to whom this Article applies shall not be subject to the prohibition set forth in Article 2, provided that:

(a) the total subsidisation of steel products by a Party under this Article in a calendar year does not exceed the level calculated in accordance with Annex x.

(b) *Option 1:* the share of total subsidisation referred to in paragraph (a) to a manufacturer of steel products and its affiliates [other than to an SME] is not disproportionately large in a calendar year;

Option 2: the share of total subsidisation referred to in paragraph (a) to a manufacturer of steel products and its affiliates [other than to an SME] is not {...} per cent above its share in the steel production of the Party in a calendar year;

Option 3: the share of total subsidisation referred to in paragraph (a) to a manufacturer of steel products and its affiliates [other than to an SME] does not exceed {...} per cent of the total amount of the permitted subsidies in a calendar year;

Option 4: the share of total subsidisation referred to in paragraph (a) to a manufacturer of steel products and its affiliates [other than to an SME] is not disproportionately large in a calendar year and is not granted to companies which are highly competitive by international standards;

[(c) subsidies are duly notified, in accordance with this Agreement;

[(e) subsidies do not lead to the addition of new capacity]; and

[f) subsidies are not used for greenfield investments.]

4.4 Subject to the terms and condition set forth in paragraph 3, export subsidies granted in conformity with the provisions of paragraphs 2, 5 and 6 of Article 27 of the ASCM shall not be prohibited.

[4.5 *Option 1:* Where[, after a period of {...} years,] [a Party's share of world crude steel production exceeds {...}][a Party's per capita crude steel production exceeds {...}][a Party's consumption per capita exceeds {...}][a Party's share of world steel exports exceeds {...}] its authorised level of subsidisation shall be reduced [by {...} percent per {...} year(s)][in relation to its increase in {crude steel production}{the production of steel products} from the year {...} to the year {...}.

Option 2: After a period of [...] years, the Parties will review this Article with a view towards reducing the levels of the permitted subsidisation, taking into account a Party's [share of world crude steel production][crude steel production per capita][steel consumption per capita] [share of world steel exports].]

[4.6 This Article shall cease to apply after a period of [...] years from the date of entry into force of the Agreement for a Party.]

Article 4bis

[Preferential Treatment/Developing Economies] [and Economies in Transition]

List Approach

[Preferential Treatment][Special and Differential Treatment for Developing Economies]

4bis.1 *Option 1:* This Article shall apply to [developing economy] Parties [listed in Annex I].

Option 2: This Article shall apply to [developing economy] Parties listed in Annex I [whose GDP per capita does not exceed {...}] [and whose share of world crude steel production does not exceed {...}] [and whose crude steel production per capita does not exceed {...}] [and whose steel consumption per capita does not exceed {...}][and whose share of world steel exports does not exceed {...}].

Option 3: This Article shall apply to those Parties listed in Annex I, which, for the purpose of this Agreement, shall be deemed to be developing economies [or economies in transition].

[4bis.2 This Article shall cease to apply to [developing economy] Parties [whose GDP per capita exceeds {...}] [and] [or] [whose share of world crude steel production exceeds {...}] [whose crude steel production per capita exceeds {...}] [whose steel consumption per capita exceeds {...}] [whose share of world steel exports exceeds {...} percent].]

4bis.3 In addition to subsidies which may be granted in accordance with Article 3, and without prejudice to any prohibition provided in the ASCM, a Party to whom this Article applies shall not be subject to the prohibition set forth in Article 2, provided that:

- (a) the subsidies are granted or maintained in accordance with paragraph 4;
- [(b) the subsidies do not lead to the addition of new capacity];
- (c) the subsidies are duly notified in accordance with this Agreement; and

(d) [the subsidies are not used for greenfield investments].

4bis.4 The subsidies are limited to the following:

- (a) subsidised loans by a government or a public body, provided that the terms and conditions of such loans are adequate to cover the costs of the funds employed [and take adequately account of the credit risk of the company borrowing the money];
- (b) subsidised loan guarantees by a government or a public body, provided that the terms and conditions of such guarantees are adequate to cover the costs of the guarantee [and take adequately account of the credit risk of the company borrowing the money];
- (c) subsidies for disadvantaged regions, provided that such subsidies are consistent with the criteria set forth in Annex y;
- (d) subsidies for infrastructure development within [and outside] a facility that manufactures steel products;
- (e) subsidies for modernisation, conversion or technology upgradation of a facility that manufactures steel products which shall include, without limitation, any changes to be brought about in existing facilities, equipment and machinery or the procurement of new machinery, with the objectives of reducing costs or meeting existing environmental standards, or improvements in productivity or product quality provided that:
 - (1) the subsidy shall not exceed [...] percent of the total cost of the facility modernization, conversion or technology upgradation;
 - (2) a single steel facility shall not receive a subsidy in excess of x SDR's over a five-year period for modernization, conversion or technology upgradation; and
 - (3) the objectives of reducing costs or meeting existing environmental standards or improvements in productivity or product quality shall be independently verifiable as resulting in:
 - (i) a decrease in the cost of production of at least [...] percent per tonne [as certified by an independent cost accountant];
 - (ii) improvements in quality measurable against an internationally acceptable standard set by organizations such as AISI, ASTM, BIS , BS, DIN or JIS in respect of at least [...] percent of the output of the facility; or
 - (iii) improvements in the range of products produced by the facility as judged by the change in the ability to produce sections, thicknesses or widths in accordance with internationally acceptable standards after the modifications carried out by the facility in respect of at least [...] percent of the output of finished steel of the facility.
- (f) subsidized equity infusions (*terms and conditions to be developed*);
- (g) the direct forgiveness of debts [and subsidies to cover social costs, in whatever form], including relinquishment of government revenue and other transfer of liabilities, when granted within and directly linked to the [change of ownership in companies owned by government or

any public bodies] [privatisation] of a manufacturer of steel products, including any restructuring which is directly related to the [change of ownership in companies owned by government or any public bodies][privatisation], provided that:

- (1) the [change of ownership][privatisation] sales transaction shall be consistent with commercial practices, at fair market value, at arm's length, and in accordance with generally accepted accounting standards;
- (2) the procedures followed for the [change of ownership][privatisation] shall be transparent, objective and not unduly restrictive;
- (3) the result of the [change of ownership][privatisation] [will] ensure(s) that the government or any public body no longer has official or effective control of the enterprise;
- [(4) the subsidies are not used to expand the capacity to manufacture steel products;] [the subsidies result in a reduction in the capacity to manufacture steel products;]
- (5) the [change of ownership][privatisation] [is to] occur(s) within [a reasonable time period][{...} months/years] following the grant of the subsidy; and
- (6) the Party granting the subsidy submit to the Committee detailed and complete information about the [change of ownership][privatisation] programme and notifies the subsidies in accordance with Article 7.

[(h) financial contributions by government bodies linked to a duly notified change of ownership programme will not be considered a prohibited subsidy for the purpose of this Agreement only during the implementation period of the program, as approved by the Committee.]

4bis.5 Export subsidies granted in conformity with the provisions of paragraphs 2, 5 and 6 of Article 27 of the ASCM shall not be prohibited.

[4bis.6 This Article shall cease to apply after a period of {...} years from the date of entry into force of the Agreement for a Party].

Article 4quater

[Economies in Transition]

4quater.1 This Article applies to the Economies in Transition listed in Annex II.

4quater.2 [*Note*: Provision on privatisation – language from 4bis.4 would be used or adapted if such language is needed.]

4quater.3 For a period of [...] years following the entry into force of this Agreement, subsidies that a Party has demonstrated to be absolutely necessary to maintain social stability or public order in areas where a [partial] [permanent] closure would cause considerable job losses and would result in social instability and/or have strong adverse effects on further regional development shall not be prohibited, provided that such subsidies:

- (a) are granted to areas where the number of personnel of an enterprise or group of enterprises with total capacity to manufacture steel products of less than [...] million tonnes per year account for not less than [...] percent of the population of the respective areas;
- (b) are limited to the extent which is necessary to remedy the situation;
- (c) are not aimed [directly or indirectly] at [, nor contribute to,] increasing the production or capacity of steel products; and
- (d) are implemented during the limited period of time necessary to achieve aims for which they were introduced, and are eliminated immediately after that.

PART IV: NOTIFICATION AND SURVEILLANCE

Article 6

Committee on Steel

6.1 There is hereby established a Committee on Steel (referred to in this Agreement as the “Committee”) composed of representatives from all Parties. The Committee shall carry out the tasks assigned to it by this Agreement and shall ensure its effective functioning. It shall establish its working methods and may create subsidiary bodies to assist it in carrying out its tasks.

6.2 The Committee shall act by consensus, except when otherwise provided.

6.3 [The Committee shall be assisted by a Secretariat, the costs for which shall be borne by the Parties as approved and apportioned by the Committee, unless otherwise decided by the Parties.]

6.4 The Committee shall, as appropriate, co-operate with the WTO, including its Committee on Subsidies and Countervailing Measures, as well as with other international organisations and bodies dealing with steel and other matters relevant to the Agreement.¹⁷

6.5 The Committee [may][shall periodically] call for input from industry representatives, relevant institutions and experts[, with a view towards exchanging information on steel subsidies, trade, capacity and market and other industry developments].

6.6 [The {developed} Parties to this Agreement are encouraged to provide technical assistance to {Parties listed in Annex I}{Parties benefiting from treatment under Article 4}{developing Parties}, with a view towards assisting them with the development of their steel industries.]

6.7 [The Committee on Steel shall monitor subsidy practices in those steel-producing economies that are not party to this agreement, based on information provided by the Parties to this agreement or obtained from any other sources.]

Article 7

Notifications and requests for information

7.1 [Unless a notification has been made under paragraph 2 or Article 8,] a Party shall submit a full and complete notification to the Committee when any of the following measures are enacted or otherwise taken:

- (a) any law, regulation, directive, administrative act, programme, or other official instrument under which a subsidy is or may be granted or maintained in accordance with Article 3 or Article 4; and
- (b) any subsidy which is granted pursuant to an instrument specified in (a), except for:
 - (1) a partial disbursement or instalment of a subsidy that has already been notified; and
 - (2) [a subsidy which is *de minimis*].

A modification to a previously notified measure shall also be notified, when the modification results in a change in any of the elements (a) to (g) listed in paragraph 4. A notification shall be submitted no later than [...] days after the measure or modification enters into effect.

7.2 Without prejudice to Article 8, a Party [should, to the extent possible,][shall][may] submit a full and complete notification to the Committee of any measures referred to in paragraph 1 which it intends to enact, take or modify [in sufficient time to enable the Committee to assess the measure before its entry into force].

7.3 In order to be considered full and complete, a notification under paragraphs 1 and 2 shall be made in ... [*language(s) to be specified*] and shall contain the information necessary to assess the compliance of the subsidy with the terms of this Agreement and its economic impact, and, when relevant, shall contain information on:

¹⁷ Such co-operation could, *inter alia*, include exchanging information on subsidies, trade, capacity and market and other industry developments. [*Note: This footnote would be unnecessary if the bracketed language in paragraph 5 is retained.*]

- (a) provision of this Agreement which permits the subsidy;
- (b) laws, regulations, directives, administrative acts, programmes, or other official instruments under which the subsidy is granted or maintained;
- (c) form of the subsidy (*e.g.*, grant, loan, tax concession);
- (d) policy objective and/or purpose of the subsidy;
- (e) dates and duration of the subsidy and any other time limits attached to it;
- (f) eligibility requirements of the subsidy (*e.g.* criteria applied with respect to the potential population of beneficiaries);
- (g) budgeted or expended amount of the subsidy; and
- [(h) any other reasonably available information that the Committee may decide to require].

7.4 A Party shall, by 30 June of each year, submit to the Committee an update of all measures referred to in paragraph 1 which it enacted, took or maintained in the prior calendar year.

[7.5 Notifications (*pertaining to caps*) made pursuant to Article 3 and Article 4 of this Agreement shall contain the following information]

7.6 Parties recognize that notification of a measure does not prejudice its legal status under this Agreement, the effects under this Agreement, or the nature of the measure itself.

7.7 The [Committee][Secretariat], upon request of a Party, shall without delay convey that Party's request to another Party to provide information on any measure which the requesting Party deems may be relevant to this Agreement, whether or not that measure has been notified. The Party shall respond to that request within {...} days in a comprehensive manner [, except that for the Parties for which Article 4 applies, such information shall be provided within {...} days].

7.8 The Committee, upon request of a Party, may discuss any measure which that Party believes to be covered by this Agreement, with a view towards clarifying its nature, whether or not the measure has been notified.

7.9 Nothing in this Article shall require a Party to provide confidential information, including confidential business information and information which would impede law enforcement or otherwise be contrary to the public interest. If requested, a Party shall furnish non-confidential summaries of the confidential information. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information.

Article 8

Review of Measures

******Binding arbitration approach******

[Note: The role that the Committee should play in a review process has been questioned; this Article has therefore been placed in square bracket, in its entirety.]

8.1 [Subject to the provisions set forth in Article 9,] a Party may request the Committee to review a measure [introduced, or to be introduced,] which it believes to be a subsidy or subsidy programme covered by this Agreement, with the view to determining whether or not it is prohibited by the Agreement.

8.2 The Committee's review shall be based on:

- (a) in the case of a subsidy or subsidy programme notified in advance of its implementation, or any substantial modification thereof, a request by the Party introducing the measure and a notification in accordance with Annexes [...]; in such case, no financial contribution shall be made with respect to the subsidy or subsidy programme under review until it is determined or deemed that it is not prohibited under this Agreement¹⁸;
- (b) in other cases, a notification under Article 7 or, in the absence of such a notification, a submission by the Party making the request which:
 - (1) identifies and describes the measure to be reviewed;
 - (2) indicates the relevance of the measure to the Agreement;
 - (3) provides information which could assist in assessing whether the measure is a subsidy or subsidy programme that is prohibited under this Agreement or, on the basis of the conditions attached to it, could result in the grant of a subsidy which is prohibited under this Agreement; and
- (c) any other information submitted to the Committee in respect of paragraphs (a) and (b) above.¹⁹

8.3 The Committee's review shall be completed within [...] days of the request in the case of a notified measure, or [...] days in the case of a measure that has not been notified. These periods may be extended by the Committee up to a maximum of [...] days.

8.4 If the Committee determines that the subsidy or subsidy programme would result in the grant of a subsidy that it is prohibited under this Agreement, the Party concerned shall not implement or shall immediately withdraw the measure.

8.5 If the Committee determines that a subsidy programme is not prohibited under this Agreement, the grants of a subsidy pursuant to that programme shall not be subject to review under paragraph 1, unless it is alleged that the terms or conditions attached to the subsidy programme have not been respected, or have changed or the subsidy programme, as administered, is inconsistent with the Agreement, or the terms of the Agreement have otherwise not been respected;

8.6 If, within [...] days from a [request for review under paragraph 1] [notification under paragraph 2(a)], a subsidy or subsidy programme is not found under a review in accordance with paragraph 1 to be prohibited by the Agreement, and there is no request for arbitration under Article 9, the subsidy or subsidy

¹⁸ Without prejudice to the provisions of Article 11, this provision shall also apply to subsidies or subsidy programmes existing at the time of the entry into force of the Agreement, provided that they are notified within [...] days of the entry into force of the Agreement.

¹⁹ It is understood that any Party may request or provide further information relevant to the determination of the nature of the subsidy or subsidy programme in question during the Committee process. Parties to whom a request is made shall respond with the view towards respecting the timeframe of the review.

programme shall be deemed to be in compliance with the Agreement. [In the case of a notification under paragraph 2(a), this time period shall be {... (*shorter than that specified in line 1*)} days.]

8.7 If the Committee determines, or it is deemed, that a subsidy or subsidy programme, or any substantial modification thereof, is not prohibited under this Agreement, or the Committee adopts [an arbitration body's²⁰][panel's] conclusions under Article 9[bis] to this effect:

(a) an individual case of subsidization granted pursuant to a programme shall not be subject to [binding arbitration under Article 9][Article 9bis], unless it is alleged to have violated the conditions of the programme set out in the notified measure or the terms of the Agreement; and

[(b) a measure that was notified in advance of its implementation under paragraph 2(a) and was not implemented prior to the Committee's determination or adoption of the [Arbitration Body's][panel's] conclusions shall:

[(1) be exempt from action under Part III and Part V of the ASCM²¹];

[(2) not be subject to a requirement to fully or partially repay a subsidy, under paragraph {5 of Article 9}{8 of Article 9bis};]

[(3) not be subject to paragraph {10 of Article 9}{13 of Article 9bis}; and]

[(4) other... .]]

Article 8bis

Review of Measures

****Panel/appeal approach****

[Note: The role that the Committee should play in a review process has been questioned; this Article has therefore been placed in square bracket, in its entirety.]

8bis.1 [Subject to the provisions set forth in Article 9,] a Party may request the Committee to review a measure [introduced or to be introduced] which it believes to be a subsidy or subsidy programme covered by this Agreement, with a view to determining whether or not it is prohibited by the Agreement.

8bis.2 The Committee's review shall be based on:

(a) in the case of a subsidy or subsidy programme notified in advance of its implementation, or any substantial modification thereof, a request by the Party introducing the measure and a notification in accordance with Annexes [...]; in such case, no financial contribution shall be made with respect to the subsidy or subsidy programme under review until it is determined or deemed that it is not prohibited under this Agreement;

²⁰ Or, where appropriate, the conclusions of the Appellate Body.

²¹ Including the initiation of such action.

(b) in other cases, a notification under Article 7 or, in the absence of such a notification, a submission by the Party making the request which:

(1) identifies and describes the measure to be reviewed;

(2)) indicates the relevance of the measure to the Agreement;

(3) provides information which could assist in assessing whether the measure is a subsidy or subsidy programme that is prohibited under this Agreement or, on the basis of the conditions attached to it, could result in the grant of a subsidy which is prohibited under this Agreement; and

(c) any other information submitted to the Committee in respect of paragraphs (a) and (b) above.²²

8bis.3 The Committee's review shall be completed within [...] days of the request in the case of a notified measure, or [...] days in the case of a measure that has not been notified. These periods may be extended by the Committee up to a maximum of [...] days.

8bis.4 If the Committee determines that the subsidy or subsidy programme would result in the grant of a subsidy that it is prohibited under this Agreement, the Party concerned shall not implement or shall immediately withdraw the measure.

8bis.5 If the Committee determines that a subsidy programme is not prohibited under this Agreement, the grants of a subsidy pursuant to that programme shall not be subject to review under paragraph 1, unless it is alleged that the terms or conditions attached to the subsidy programme have not been respected, or have changed or the subsidy programme, as administered, is inconsistent with the Agreement, or the terms of the Agreement have otherwise not been respected;

8bis.6 If, within [...] days from a notification [under paragraph 2(a)], a subsidy or subsidy programme is not found under a review in accordance with paragraph 1 to be prohibited by the Agreement, and there is no request for consultations under Article 9, the subsidy or subsidy programme shall be deemed to be in compliance with the Agreement. [In the case of notification under paragraph 2(a), this time period shall be { ... (*shorter than that specified in line 1*) } days.]

8bis.7 If the Committee determines, or it is deemed, that a subsidy or subsidy programme, or any substantial modification thereof, is not prohibited under this Agreement, or the Committee adopts a panel's²³ conclusions under Article 9 to this effect:

(a) an individual case of subsidization granted pursuant to a programme shall not be subject to Article 9, unless it is alleged to have violated the conditions of the programme set out in the notified measure or the terms of the Agreement as under paragraph 5; and

[(b) a measure notified under paragraph 2(a) that was notified in advance of its implementation and was not implemented prior to the Committee's determination or adoption of a panel's²⁴ conclusions shall:

²² It is understood that any party may request or provide further information relevant to the determination of the nature of the subsidy or subsidy programme in question during the Committee process. Parties to whom a request is made shall respond with the view towards respecting the timeframe of the review.

²³ Or, where appropriate, the conclusions of the Appellate Body.

²⁴ Or, where appropriate, the conclusions of the Appellate Body.

- (1) [be exempt from action under Part III and Part V of the ASCM]²⁵;
- (2) [not be subject to a requirement to fully or partially repay a subsidy, under paragraph 8 of Article 9];
- (3) [not be subject to paragraph 13 of Article 9; and]
- (4) [other... .]

²⁵ Including the initiation of such action.

PART V: REMEDIES AND COUNTERVAILING MEASURES

Article 9

Dispute Settlement and Remedies

****Binding arbitration approach****

9.1 [Upon the request of a Party] [Upon the agreement of all Parties involved], the Committee shall submit to binding arbitration the following matters:

- (a) a failure by the Committee to make a determination under Article 8, provided the request is made within [...] days of the completion of the Committee's review; or
- (b) an alleged violation in the conditions of a notified measure that it was determined or deemed, in accordance with Article 8, would not result in the grant of a subsidy that is prohibited under this Agreement.

9.2 The arbitration body shall be drawn from a permanent group of experts to be established by the Committee. It shall present its conclusions to the Committee within [...] days from the date when the matter was referred to the arbitration body. The arbitration shall be in accordance with the procedures set out in Annex [...].

9.3 If a measure is found to be a subsidy that is prohibited under this Agreement, the arbitration body shall recommend that the Party concerned withdraw or not grant the subsidy, or that it modify the subsidy to bring it into conformity with the Agreement, without delay. In this regard, the arbitration body shall specify in its recommendation the time period within which the measure must be withdrawn or modified. This period shall normally be [...] days from the adoption of the arbitration body's conclusions.²⁶

9.4 Any modification taken pursuant to an arbitration body's conclusions under paragraph 3 shall be notified to the Committee, and such notifications shall be sufficiently precise to enable other Parties to evaluate the consistency of the subsidy or subsidy programme with the provisions of the Agreement and shall contain, when relevant, the information specified in Article 7.4. If a Party considers that the amended subsidy or subsidy programme is still inconsistent with the provisions of the Agreement, it may refer the matter to the original arbitration body within [...] days from the notification. The arbitration body shall examine the matter and shall complete its examination within [...] days of the referral. If the modified subsidy or subsidy programme is found not to be consistent with the Agreement, it shall be withdrawn or not granted.

[9.5 The arbitration body may also recommend that a Party require the beneficiary of the subsidy concerned to [totally or partially repay it][repay the non-amortised portion of non-recurring subsidies, calculated in accordance with accepted practice]. In this regard, the arbitration body shall specify in its recommendation the time-period within which the repayment must be completed.]

²⁶ Or, where appropriate, the report of the Appellate Body.

[9.6 The Committee shall adopt the arbitration body's conclusions, within [...] days of receiving them, unless one of the parties notifies the Committee of its decision to appeal or unless the Committee decides by consensus not to adopt them.]

[9.7 The conclusions of the arbitration body shall only be subject to appeal if the findings are of direct relevance to WTO Agreements other than the SSA. On this basis, a decision of the arbitration body may be referred to the WTO Appellate Body, under the procedures and deadlines set out in Article 4 of the SCM Agreement, by one of the Parties to the dispute, provided that such action is taken prior to the scheduled adoption of the arbitration body's report by the Committee. The Appellate Body shall determine whether or not the measure in question is in compliance with the SSA.]

9.8 In the event a recommendation of the [DSB] [Committee] is not followed within the time-period specified by the arbitration body, which shall commence from the date of adoption of the arbitration body's report²⁷, the [DSB] [Committee] shall grant authorisation to [any Party][the complaining Party or Parties][any third Party participating in the dispute] to take appropriate²⁸ countermeasures, unless the [DSB] [Committee] decides by consensus to reject the request.

9.9 In the event a party to the dispute requests arbitration under paragraph 6 of Article 22 of the DSU, the arbitrator (arbitration body) shall determine whether the countermeasures are appropriate. *[Note: In the event the Agreement is outside the WTO, a "stand-alone" provision would have to be drafted mirroring the DSU procedures.]*

[9.10 In the event a recommendation of the [DSB] [Committee] is not followed within the time period specified by the arbitration body, [any] Party, [in addition to applying the above countermeasures], may apply countervailing measures on imports of any product benefiting from the subsidy, without the need to demonstrate injury, within the meaning of footnote 45 to the SCM Agreement. [In this regard, the arbitration body may, in its report, make recommendations on the amount of subsidization which may be subject to countervailing measures.] Such countervailing measures shall in all other respects comply with the provisions of the SCM Agreement and Article VI of GATT 1994.]

[9.11 No financial contributions or financial commitments shall be made with respect to measures for which proceedings under this Article are underway.]

[9.12 Where A Party has {repeatedly} failed to bring itself into compliance with the recommendations of the Committee, the Committee may decide, by consensus minus one, to invite that Party to withdraw from this Agreement.]

Article 9bis

Dispute Settlement and Remedies

******Panel/appeal approach******

9bis.1 Whenever a Party has reason to believe that a prohibited subsidy is being granted or maintained by another Party, such Party may request consultations with such other Party.

9bis.2 A request for consultations under paragraph 1 shall:

²⁷ Or, where appropriate, the report of the Appellate Body.

²⁸ This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

- (a) include a statement of available evidence with regard to the existence and nature of the subsidy in question;
- (b) be reported to the Committee; and
- (c) be open to other Parties.

9bis.3 Upon request for consultations under paragraph 1, the Party believed to be granting or maintaining the subsidy in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

9bis.4 If no mutually agreed solution has been reached within *x* days of the request for consultations, any party to such consultations may refer the matter to the [Dispute Settlement Body (DSB)] [Committee] for the immediate establishment of a panel, unless the [DSB] [Committee] decides by consensus not to establish a panel.

9bis.5 The panel shall submit its final report to the parties to the dispute. The report shall be circulated to all Parties within *x* days of the date of the composition and the establishment of the panel's terms of reference.

9bis.6 If a measure is found to be a subsidy that is prohibited under this Agreement, the panel shall recommend that the Party concerned withdraw or not grant the subsidy, or to modify the subsidy to bring it into conformity with the Agreement, without delay. In this regard, the panel shall specify in its recommendation the time period within which the measure must be withdrawn or modified. This period shall normally be [...] days from the adoption of the panel's conclusions.²⁹

9bis.7 Any modification taken pursuant to a panel's conclusions under paragraph 6 shall be notified to the Committee, and such notifications shall be sufficiently precise to enable other Parties to evaluate the consistency of the subsidy or subsidy programme with the provisions of the Agreement and shall contain, when relevant, the information specified in Article 7.3. If a Party considers that the amended subsidy or subsidy programme is still inconsistent with the provisions of the Agreement, it may refer the matter to the original panel within [...] days from the notification. The panel shall examine the matter and shall complete its examination within [...] days of the referral. If the modified subsidy or subsidy programme is found not to be consistent with the Agreement, it shall be withdrawn or not granted.

[9bis.8 The panel may also recommend that a Party require the beneficiary of the subsidy concerned to {totally or partially repay it}{repay the non-amortised portion of non-recurring subsidies, calculated in accordance with accepted practice}. In this regard, the panel shall specify in its recommendation the time-period within which the repayment must be completed.]

[9bis.9 The Committee shall adopt the panel's conclusions, within [...] days of receiving them, unless one of the parties notifies the Committee of its decision to appeal or unless the Committee decides by consensus not to adopt them.]

9bis.10 Where a panel report is appealed, the Appellate Body shall issue its decision within [...] days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within [...] days, it shall inform the [DSB][Committee] in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed [...] days. The appellate report shall

²⁹ Or, where appropriate, the report of the Appellate Body.

be adopted by the [DSB][Committee] and unconditionally accepted by the parties to the dispute unless the [DSB][Committee] decides by consensus not to adopt the appellate report within [...] days following its issuance to the Parties.

9bis.11 In the event a recommendation of the [DSB] [Committee] is not followed within the time-period specified by the panel, which shall commence from the date of adoption of the panel's report³⁰, the [DSB] [Committee] shall grant authorisation to [any Party][the complaining Party or Parties] to take appropriate³¹ countermeasures, unless the [DSB] [Committee] decides by consensus to reject the request.

9bis.12 In the event a party to the dispute requests arbitration under paragraph 6 of Article 22 of the DSU, the arbitrator (arbitration body) shall determine whether the countermeasures are appropriate. *[Note: In the event the Agreement is outside the WTO, a "stand-alone" provision would have to be drafted mirroring the DSU procedures.]*

[9bis.13 In the event a recommendation of the [DSB] [Committee] is not followed within the time period specified by the panel, [any] Party, [in addition to applying the above countermeasures], may apply countervailing measures on imports of any product benefiting from the subsidy, without the need to demonstrate injury, within the meaning of footnote 45 to the SCM Agreement. [In this regard, the arbitration body may, in its report, make recommendations on the amount of subsidization which may be subject to countervailing measures.] Such countervailing measures shall in all other respects comply with the provisions of the SCM Agreement and Article VI of GATT 1994.]

[9bis.14 No financial contributions or financial commitments shall be made with respect to measures for which proceedings under this Article are underway.]

[9bis.15 Where A Party has {repeatedly} failed to bring itself into compliance with the recommendations of the Committee, the Committee may decide, by consensus minus one, to invite that Party to withdraw from this Agreement.]

³⁰ Or, where appropriate, the report of the Appellate Body.

³¹ This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited.

Article 10

[Antidumping and] Countervailing Measures

Option 1:

No provision of this Agreement shall [be construed to] preclude the right of recourse to [antidumping measures in accordance with the WTO Agreement on Implementation of Article VI of GATT 1994 and] countervailing measures according to the WTO ASCM[, except as otherwise provided in this Agreement].

Option 2:

10.1 Any notified subsidy or subsidy programme which has been deemed to comply with the relevant provisions of Articles 3 or 4 in accordance with procedures provided in Article 8 shall be exempt from action³² under Parts III and V of the SCM Agreement. In the case of any other subsidy or subsidy programme, Parts III or V of the SCM Agreement may be invoked, but such subsidy or subsidy programme shall be treated as non-actionable if found to conform to the relevant requirements of Articles 3 and 4. The subsidising Party shall have the burden of proving such conformity.

10.2 Any existing countervailing measures against subsidies which are notified in accordance with the provisions of this Agreement, and found to comply with the relevant provisions of Article 3 or 4, shall be terminated immediately following determination of such compliance.³³

Option 3:

10.1 When conducting investigations for alleged dumping or subsidisation on imports originating in the territory of another Party, any Party shall comply with the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Agreement on Subsidies and Countervailing Measures, except as otherwise provided herein.

10.2 Antidumping duties shall remain in force only for as long as and to the extent necessary to counteract dumping which is causing injury and shall be terminated on a date not later than [...] years from its imposition.

10.3 A Party shall not initiate a new anti-dumping investigation, either on its own initiative or at request, until a date no sooner than [...] year following the termination of the anti-dumping measure, unless there are exceptional circumstances that justify the initiation in a shorter period, which shall not be less than [...] months. The authority shall give a full description of the exceptional circumstances and present the reasons justifying the initiation of the investigation within such a shorter period in the public notice of initiation.

10.4 Antidumping and countervailing duties shall be less than the margin of dumping and the total amount of the subsidy, respectively, if such lesser duty would be adequate to remove the injury to the domestic industry.

³² Including the initiation of such action.

³³ This requirement shall not prevent parties undertaking a review in accordance with their own domestic practices, provided that such a review is concluded promptly.

Additional option:

No Party to this Agreement shall be allowed to initiate or maintain a countervailing measure against privatised companies, provided that:

- (a) such CVD action is/was concluded on the basis of financial contributions prior to privatisation; and
- (b) such companies have demonstrated compliance to the conditions of change of ownership, which, under WTO regulations, imply no transfer of benefits to new (private) shareholders

PART VI: TRANSITIONAL MEASURES

Article 11

Existing Measures

Option 1:

11.1 All subsidies and subsidy programmes prohibited by this Agreement shall be terminated by an economy before the date on which it becomes a Party to this Agreement. [Developing Parties under Article 4 shall terminate those subsidies gradually within {...} years.] All other [support measures/subsidies] shall be notified in accordance with paragraph 3 of Article 7, at the entry into force of this Agreement.

11.2 Parties shall terminate or bring in conformity with this Agreement all programmes listed in Annex [...] according to the provided timetable. [Until then, the subsidies shall not be subject to any new remedies under this Agreement or the WTO ASCM.]

11.3 No Party shall extend the scope of any existing subsidy that is inconsistent with the provisions of this Agreement, nor shall such a measure be renewed upon its expiry.

[11.4 All subsidy programmes granted by an economy prior to entry into force of this Agreement, including any benefit conferred thereof, shall not be subject to retroactive sanctions or new remedies under this Agreement or the WTO ASCM.]

Option 2:

11.1 Each Party shall notify to the Committee, not later than [...] days after the date of entry into force of this Agreement for such Party and in accordance with the terms set forth in paragraphs 3 and 4 of Article 7, any subsidy to steel enterprises as covered by Articles 1 and 2 of this agreement which it established before the date on which it became a Party to this Agreement.³⁴ Such a notification shall be subject to review under Article 8.

11.2 Existing subsidies that are incompatible with the provisions of this Agreement shall be either:

³⁴ Subsidies that are incompatible with the provisions of this Agreement shall also be notified. This provision does not apply to subsidies notified under Article 8.2(a).

- (a) terminated by the end of the [...] -day period specified in paragraph 1; or
- (b) brought into conformity with the relevant provisions of Articles 3 or 4 within [...] months/years of the date of its entry into force for such Party. Until then, they shall not be subject to any new remedies under this Agreement.³⁵

11.3 Following notification under paragraph 1, the Party concerned shall within [...] days inform the Committee of how it intends to amend any existing subsidies in order to bring them into conformity with the Agreement, in accordance with the provisions of paragraph 2. At the end of the period of [...] months provided for in paragraph 2(b), the subsidising Party may notify the Committee that the subsidy has been brought into conformity with the Agreement. Such notifications shall be dealt with in accordance with the provisions of paragraphs [...] to [...] of Article 8.

11.4 Notwithstanding the provisions of paragraph 3, any Party, upon presentation of a duly substantiated request, may request the Committee to consider whether the action proposed by the Party granting the subsidy is sufficient to ensure its conformity with this Agreement. If the Committee cannot agree within [...] days, the matter may be referred to the arbitration body, which shall complete its examination within [...] days. If the arbitration body finds that the action proposed by the Party granting the subsidy is not sufficient to ensure its conformity with this Agreement, the subsidy shall be withdrawn immediately.

11.5 No Party shall extend the scope of any existing subsidy that is inconsistent with the provisions of this Agreement, nor shall such a measure be renewed upon its expiry.

PART VII: FINAL CLAUSES

Article 12

Reservations

Reservations shall not be entered in respect of any of the provisions of this Agreement.

Article 13

Review of Agreement

13.1. Amendments to this Agreement shall be adopted by [] majority of the Parties and shall enter into force for all Parties [] days after instruments of acceptance have been deposited with the Depository by [] of the Parties.

13.2. No amendment of this Agreement shall be adopted before 5 years from its entry into force except if the market share in terms of world crude steel production represented by the Parties to this Agreement falls below [] of total world crude steel production.

³⁵ Subject to all the relevant provisions of Article 11 being satisfied.

Article 14

Signature, Acceptance and Accession

14.1 Until its entry into force, this Agreement shall be open for signature by... *[list of the economies participating in the negotiations]*, and any economy invited by them.

14.2 This Agreement shall be subject to ratification, acceptance or approval, which shall be effected by the deposit of a formal instrument with the Depositary.

14.3 This Agreement shall be open to accession by any other economy, on terms to be agreed between the economy and the Parties, by the deposit with the Depositary of an instrument of accession which states the terms so agreed.

Article 15

Entry into Force

15.1 This Agreement shall enter into force on fifteenth day following the date upon which [] economies which represent at least [] per cent of the world crude steel production according to [] have deposited their instruments of ratification, acceptance or approval.

15.2 For each economy accessing after its entry into force, the Agreement shall enter into force on the fifteenth day following the date of deposit of its instrument of accession.

Article 16

Withdrawal

Any Party withdraw from this Agreement by written notice addressed to the Depositary. The withdrawal shall take effect upon the expiration of 12 months from the day in which written notice of withdrawal is received by the Depositary. An economy shall not be discharged, by reason of its withdrawal, from the obligations arising from this Agreement while it was a Party to it, including any financial obligations which may have accrued.

Article 17

Transition to the WTO

17.1 The Parties to this Agreement may decide [exclusively by consensus] to request the Ministerial Conference established pursuant to Article IV:1 of the WTO Agreement, to exercise its authority under Article X:9 of the WTO Agreement to add this Agreement to Annex 4 of that Agreement.³⁶

17.2 Upon this Agreement being added to Annex 4 of the WTO Agreement:

- (a) the Committee on Steel shall, in accordance with Article IV:8 of the WTO Agreement, continue to carry out the functions assigned to it under this Agreement and shall keep the General Council established under Article IV:2 of WTO Agreement, informed of its activities;

³⁶ The Parties shall be deemed to have decided by consensus if no Party formally objects to the proposed decision. [Note: Refer to footnote 1 to the WTO Agreement.]

- (b) the rules and procedures set out in Articles 8 and 9 of this Agreement shall, subject to subparagraph (c), be considered “special”, within the meaning ascribed to that term in Article 1:2 and Appendix 2 of the DSU ; and
- (c) the DSB shall assume responsibility for the adoption of all review [reports][determinations] under Article 8 and all dispute settlement [reports][determinations] under Article 9 of this Agreement that are issued after the date on which this Agreement is added to Annex 4 of the WTO Agreement, regardless of when the proceedings in question were initiated.

17.3 *Option 1:* In the event of a conflict between a provision of this Agreement and a provision of an agreement in Annex 1A to the WTO Agreement, the provision of this Agreement shall prevail to the extent of the conflict.

Option 2: The provisions of the GATT 1994 and of other Multilateral Trade Agreements in Annex 1A to the WTO Agreement shall apply subject to the provisions of this Agreement.

Article 18

Other final provision(s)

All Parties to this Agreement make the commitment that they shall not take trade measures toward another Party that are stricter than to any other third parties.

Article 19

Depositary

19.1 This Agreement shall be deposited with the [Secretary General of the OECD] [Director-General of the WTO] who shall furnish to each Party a certified copy of this Agreement and of each amendment thereto pursuant to Article 13, and a notification of each acceptance thereof or accession thereto pursuant to Article 14 and of each withdrawal pursuant to Article 16.

19.2 This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at [] this [] day of [] two thousand [] in a single copy, in the English and French languages, each text being equally authentic.

[Annex I]

[List of Parties that are eligible for Article 4 treatment.]

[Annex II]

[List of transition economy Parties that are eligible for preferential treatment..]

Annex x

Calculation of the Level of Subsidisation

1. A calculation of the amount of a subsidy for the purpose of Article 4 shall be done [in accordance with Article 14 of the ASCM] [in accordance with Annex IV of the ASCM].

2. The level of subsidisation for a Party in a calendar year shall not exceed [...] Special Drawing Rights per tonne of crude steel production* in the territory of that Party in the calendar year before the entering into force of the Agreement.

[3. *Not yet discussed - Unused subsidies* - In the event that the level of authorised subsidisation has not been reached in a calendar year, a Party may carry-forward to the following year the part of the authorised subsidy which was not utilised, provided the level of subsidisation in a year shall in no case exceed [...] percent of the amount calculated in paragraph 2.]

[4. Notwithstanding paragraph 2, a Party may, in a calendar year, provide a level of subsidisation of [...] million SDR.]

[5. Subject to paragraph 2, a Party may not, in a calendar year, provide a level of subsidisation exceeding [...] million SDR.]

[6. Subsidies granted prior to the date of entry into force of this Agreement, the benefits of which are allocated to future production, shall be included in the overall level of subsidisation.][*To be discussed*]

** Note: The proposal to apply a degressive approach to permitted subsidies in accordance to the level of crude steel production or total sales of steel products for both each Party and each steel enterprise within its territory, will be discussed in the context of elaboration of this figure.*

Annex y

Criteria for Subsidies to Disadvantaged Regions

1. Each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity.

2. The region is considered as disadvantaged on the basis of neutral and objective criteria³⁷, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

3. The criteria shall include a measurement of economic development which shall be based on at least one of the following factors:

³⁷ "Neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidised project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2 of the ASCM.

- one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;
- unemployment rate, which must be at least 110 per cent of the average for the territory concerned;

as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

[Note: Taken from paragraphs i to iii of Article 8.2(b) of the ASCM.]

ATTACHMENT

Technical Comments and Issues

Preamble

- Comments by delegations are contained in WP7.

Article 1

- The current, bracketed text reflects the views of the majority of participants in the negotiations. Consensus has, however, been reached on a subset of products – namely, HS items 72.06 to 72.29, except for three wire products (72.17, 72.23 and 72.29). Further information on the specific views of participants is contained in WP34/REV1³⁸.
- Some participants have expressed interest in possibly monitoring “upstream” and “downstream” products that might not be covered by the Agreement. Others have questioned the value of such monitoring.
- In addition to “steel products”, the structure and language of the final Agreement may require further definitions. Such further definitions might, for example, include – “crude steelmaking equipment”, “upstream products”, “downstream products”, “affiliate”, “natural disaster”, “crude steel” and “facility”.

Article 2

- Five ways to formulate the prohibition of subsidies have been discussed. The views of delegations on the various proposals are summarised in a matrix contained in WP34/REV1.

The formulations reflected in the draft text were examined in a Secretariat document [SG/STEEL(2003)10], which also addresses issues associated with use of the term “directly or indirectly”. The analysis indicates that each formulation has implications that need to be closely considered. It suggests that, whatever approach is decided on, further clarifying language may need to be developed.

If the term “manufacturer” is used, it has been noted that the term should be defined so as to exclude affiliates which do not produce steel products. This would help to ensure that conglomerates would continue to be eligible to receive subsidies that did not benefit their steel operations.

³⁸ WP34/REV1 is identical to WP34, except that the note in Table 2 has been revised.

If the term “directly or indirectly” is used, it has been noted that specific language may have to be introduced to exclude service centres (if there is agreement that such centres should in fact not be covered).

How, or whether, export credits could or should be treated in the Agreement has been discussed. Some of the issues were examined by the Secretariat in document SG/STEEL(2003)8. Proposed footnote 1, intends to leave the “status quo” unchanged. In practice it would mean that export credit practices for steel would be treated exactly as export credit practices for any other sectors. Views of participants on this issue, however, differ.

Article 3

- A matrix reflecting the views of participants on exceptions, based on information shared at the July 2003 meeting, is contained in WP34/REV1.
- Further elaboration of what is meant by “grant” may be required in this Article, as well as in Article 7 (e.g., it may not be clear whether a grant is an event that should be recorded at the time a decision is made by a granting authority, or at the time an initial disbursement is made, etc.).
- The shaded text “*and crude steel*” is to be deleted, pending confirmation by one of the participants.
- 3.1(a).– The term *crude steel* may need to be defined, or it may be sufficient to replace the word *crude*, with *molten*.

For information, the IISI has called attention to the following definition of crude steel, which appears in “The Iron and Steel Industry – a Dictionary of Terms”, by W.K.V. Gale:

“Any steel which has not been rolled. It includes ingots and continuously cast steel (which has not passed through the ingot stage). For statistical purposes the term is taking over from ingot steel, because of the growth of continuous casting. For reckoning output tonnages crude steel also includes steel for castings”.

If this definition is accepted, it might, for purposes of the Agreement, be adapted to read:

Any steel which has not been rolled. It includes ingots, continuously cast steel (i.e., steel which has not passed through the ingot stage) and steel for castings.

- 3.1(b)(1).– For information, the ASCM uses the expression “government” to refer to “a government or nay public body within the territory of a Member” [see ASCM Article 1.1(a)(1)].
- 3.2.– It is understood that the expression in paragraph 3.2 “granted by a government”, means a government at any level; this point should be clearly established in Article 2.

The term “affiliates” will need to be defined, either in the context of this Article or in a definitions section (see WP 70).

The term *Party* may have to be elaborated to clarify the situation of, for example, the member states of the EU.

- 3.2(e) and 3.3(e).– Some participants expressed the view that the period *within [...] years of the cessation* should not be lengthy, in order to provide the acquiring firm with commercial flexibility.

- 3.3(d).– The wording of this provision may have to be modified in light of the inclusion and final wording of 3.1(a).
- 3.5.–Further consideration is to be given to language that would require that auditing certify that good corporate governance principles had been adhered to.
- 3.6.– The relationship of this paragraph to paragraphs 3.2 and 3.3 may need to be clarified. As currently drafted, a Party could arguably provide assistance to workers made redundant by a permanent closure, whether or not the conditions specified in paragraphs 2 or 3 had been met. If this is not intended, one solution would be to indicate that subsidies for workers could be provided as long as the closure in question met the criteria set forth in 3.2 (if a total closure) or 3.3 (if a partial closure).

Clarifying language may be forthcoming concerning “legal obligations”.

- 3.7.–It was noted that this type of provision may be relevant to other exceptions, and may therefore be better placed elsewhere in the agreement.
- 3.9. – The condition that subsidies should not result in a significant enhancement in the competitiveness of a facility received considerable comment. It was pointed out that enhancement would likely occur in the event older damaged equipment were replaced with new equipment.

Support was expressed for a more comprehensive definition of “natural disaster”.

It was suggested that a claim of natural disaster be backed up by an official government proclamation to this effect (as a condition for providing a subsidy).

- 3.14. – SMEs would have to be defined. It has been suggested that they be described as independent enterprises which have fewer than [...] employees and have either an annual turnover not exceeding [...], or an annual balance sheet total not exceeding [...].

Article 4

- 4.3(a).– The proposal to apply a degressive approach to permitted subsidies is to be addressed in the context of the elaboration of the Annex, as will other proposals.
- 4.3(b). – SME would have to be defined.
- 4.3(f). – “Greenfield investments” would have to be defined.
- 4bis.3(b). – The concept that subsidies do not lead to the addition of new capacity would have to be elaborated on in the interpretive part of the agreement.
- 4bis.4(a). – Further elaboration would need to be provided in a footnote or in an Annex. WP67 suggests that loans should not be prohibited as long as the cost to the firm receiving the loan was equal to the sum of: (i) the cost of the fund to the lending agency, (ii) the administrative costs and fees incurred by the lending agency, and (iii) a risk spread of the operation, where (i-iii) were each greater than zero. Other conditions would be that: (i) the credit risk would have to be borne by the lending agency, (ii) the lending agency would have to be duly regulated and monitored by local

monetary authorities, in accordance with prudential and transparency standards, and (iii) the lending agency would be obliged to publish financial statements duly reviewed by independent auditors.

- 4bis.4(b). – An Annex may need to be developed to elaborate on the calculation of the costs of the guarantee.

Article 6

- 6.3. – It was noted that the principles underlying the apportioning of costs would need to be established during the negotiations.
- 6.7. – There is general consensus that if this paragraph is included in the Agreement, it would be better placed either in the Preamble or in Article 4.

Article 7

- 7.5. – A more advanced drafting of this paragraph is, at this stage premature. Its final content would depend on the structure of Articles 3 and 4.

Article 8 and Article 9

- Under Article 8, an existing measure that the Committee determines to be prohibited must be withdrawn; the treatment is somewhat different under Article 9, however, where there is scope for modifying a subsidy that was found to be prohibited.
- During the IDG's discussion, it was suggested that Articles 8 and 9 might have to be revisited if a global "cap" approach is used in Articles 3 and/or 4. Issues would arise when the value of individual subsidies, each of which was in conformity with the Agreement, was summed, and the grand total exceeded the cap.
- 9.2. – The composition and status of the group of experts will need to be clarified.
- 9.5 and 9bis.8. – An informal group in the WTO has conducted work in this area that might be useful in elaborating how this provision could be implemented.

Article 11

- A standard reporting format would need to be developed.
- Paragraphs 1 and 2 in option 1 need to be linked, and the relationship between the two sentences in paragraph 1 needs to be clarified.

Annex y

- The proposal to apply a degressive approach to permitted subsidies for both each Party and each steel enterprise within the territory of a Party concerned remains under consideration.