

**TRADE AND INVESTMENT**

**Steel**

**Agreement Between the  
UNITED STATES OF AMERICA  
and MEXICO**

Signed October 3, 1989

*with*

Appendices



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“. . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

## **MEXICO**

### **Trade and Investment: Steel**

*Agreement signed October 3, 1989;  
Entered into force October 3, 1989.  
With appendices.*

AGREEMENT ON STEEL TRADE LIBERALIZATION

Article 1. Basic Objectives

1. The basic objectives of this bilateral framework agreement are:
  - o To provide a transition toward more liberal conditions for steel trade;
  - o To reduce trade distorting practices in steel trade;
  - o To establish a multilateral trading environment for steel that is free from trade distorting practices.
2. This agreement while facilitating the achievement of the above objectives in paragraph 1, shall not prejudice the negotiating positions of parties with respect to general disciplines on subsidies, dispute settlement in the GATT or in the Agreement on Interpretation and Application of Article VI, XVI, and XXIII of the General Agreement on Tariffs and Trade nor shall disciplines on the steel sector contained herein prejudice the techniques and modalities of disciplines under negotiation in the Uruguay Round that would apply to the steel sector via general disciplines or otherwise predetermine the results of the GATT Uruguay Round negotiations. The parties also confirm that the GATT Uruguay Round negotiations will not be used in any way to weaken the discipline on the steel sector as provided in this agreement or the parties' commitment to seek to multilateralize the substance of such disciplines for the steel sector.

Article 2.

1. The Government of the United States and the Government of Mexico reaffirm for purposes of this Arrangement their obligations under existing multilateral rules not to grant any export subsidy identified in the Illustrative List of Export Subsidies which is annexed to the U.S. Mexican Bilateral Understanding on Subsidies and Countervailing Duties.
2. They agree that public support shall not be granted to their steel industry except as provided in Appendix A.

*J. Cruz*

3. For the purpose of this Agreement "Public Support" to the steel industry means any intervention specifically provided by law or in fact to that sector by the parties, or through public resources in any form whatsoever. It shall in particular cover the foregoing or receipts, such as fiscal concessions, and the transfer of public resources to steel undertakings in the form of acquisitions of shareholdings or provisions of capital or similar financing which cannot be regarded as a genuine provision of risk capital according to normal investment practice in a market economy. See appendix C.
4. The public support commitments listed in Appendix B taken by the parties before the entry into force of the present agreement shall not be affected by this Agreement.

#### Article 3.

1. Because tariff and non-tariff barriers can restrict and distort trade flows, the Government of the United States and the Government of Mexico agree to implement liberalization measures in both tariff and non-tariff areas.
2. Tariffs: Mexico and the U.S. will seek in the Uruguay Round the reduction, consolidation and, as appropriate, the elimination of tariffs in the steel sector. During the period of the VRA, the U.S. and Mexico will not raise their present tariffs for steel products. Both countries will seek the harmonization of tariffs on products of interest to each country bearing in mind the need for multilateral liberalization.
3. Non-Tariff Measures: The Government of the United States agrees to phase out or eliminate all quotas, including voluntary restraint arrangements, by March 31, 1992. Both the Government of the United States and the Government of Mexico agree not to introduce any new non-tariff measure or to reintroduce past measures that restrict or distort trade flows.

#### Article 4.

1. If a dispute arises between the US and Mexico arising out of, or related to, the interpretation or application of this Agreement, and if such dispute cannot be settled by means of consultations within fifteen days after a request therefor made by either party, then the US or Mexico may notify the other party that it is referring the dispute to binding arbitration and appoint an arbitrator. Within fifteen days of such notice, the other party must appoint a second arbitrator. Such arbitrators shall not have a financial

*J. Cant*

interest in the dispute and shall not take instructions from either party.

The two arbitrators appointed by the US and Mexico shall appoint a third arbitrator, selected from a list of arbitrators compiled by the US and Mexico, or by random selection if necessary, within fifteen days after the appointment of the second arbitrator. The third arbitrator shall not be a national of either party, shall not have a financial interest in the dispute, and shall serve as Chairman of the arbitration panel.

The rules of procedure shall be established by the Mexico and the US or, failing that, by the arbitrators. The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide written submissions and rebuttal arguments.

Each party shall bear the cost of its own arbitrator and its presentation in the proceeding. The cost of the Chairman and the remaining cost of the proceeding shall be borne equally by the US and Mexico.

2. The panel shall make its decisions by majority vote.
3. Within three months after the Chairman is appointed, the panel shall determine whether there has been an infringement of this Agreement. The panel shall also determine the appropriate measures to remedy such infringement.

In extraordinary circumstances that prevent the panel from meeting the required deadline, the parties may agree to extend the deadline but only to the extent necessary.

4. In the case of a clear and significant violation of article 2 or 3, the adversely affected party may propose a preliminary remedy to offset the effects of such a violation pending a final arbitral determination. The preliminary remedy shall be subject to the same guidelines as a final remedy.

The procedures for establishing a preliminary remedy shall be as follows:

(a) If the matter has not been resolved through consultations within 15 days, and notice has been given by the adversely affected party that it considers the matter to be a clear and significant violation, the parties shall within 5 days appoint the Chairman of the arbitration panel

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C. Pitt

by agreement or by random selection from the mutually compiled list.

(b) After selection of the Chairman, the adversely affected party may submit to the Chairman a proposed preliminary remedy to offset the effects of such a violation. Within 15 days, the Chairman must decide whether to authorize the proposed preliminary remedy, or to modify or disapprove such proposed remedy. The decision of the Chairman on the existence, scope, nature and duration of the preliminary remedy shall be made taking into account the clarity and significance of the violation and the reasonableness of the preliminary remedy in light of the guidelines for a remedy.

(c) The preliminary remedy authorized by the Chairman may be applied by the adversely affected party until extended, modified or terminated by the arbitration panel's final determination.

5. 1) In making its interim relief and final remedy determinations under paragraphs 3 and 4, the panel shall take into account the following guidelines:

(a) Preference shall be given to measures that are related to the product or products associated with the violation.

(b) If necessary to achieve the objectives of this Agreement with respect to an infringement, the panel may authorize the imposition of temporary duties, or security therefor, on imports of products originating in the territory of the infringing party into the territory of the non-infringing party.

In designing such measures, the following shall be taken into account:

- (1) the gravity and nature of the infringement;
- (2) the duration thereof;
- (3) the adverse effects on the interests of the other party; and,
- (4) the proportion of US-Mexican trade in the product or products directly concerned by the infringement.

*J. C. H.*

(2) Measures decided by the arbitrators should not be applied cumulatively with national or other provisions in respect of the same factual elements which constitute the infringement whether they have already been decided or are decided subsequently.

6. The US and Mexico must take the measures specified by the panel in its determinations. If the US or Mexico fails to implement such measures and they are unable to agree on appropriate compensation or other remedial action, then the other party may propose to the panel suspension of equivalent benefits under this Agreement to the non-complying party. Such suspension shall take effect 30 days after it is proposed to the panel unless the panel disapproves such action.

Article 5.

The United States agrees that, in consideration of Mexico's willingness to reach early agreement on a consensus to reduce trade distorting practices in steel, the United States will, at the request of Mexico, promptly consult with a view to determining whether amendments to this agreement, including Appendix A hereof, would be appropriate in light of other steel consensus agreements between the United States and steel-producing nations.



For the Government of  
Mexico



For the Government of  
the United States

## APPENDIX A

All public support to the steel industry is prohibited under the terms of this Agreement with the following exceptions:

1. Public Support for Research and Development

Up to a maximum of 35% net grant equivalent of the eligible costs as regards basic industrial research and 25% in the case of applied research and development.

Eligible costs are only those which are directly related to research and development; excluding those related to industrial application or commercial exploitation of the results.

2. Public Support for Environmental Protection

Up to a maximum of 15% net grant equivalent of the investment costs directly related to the environmental measures concerned.

3. Public Support for Social Purposes

Aid to costs of payment to workers made redundant or accepting early retirement by the permanent discontinuance, curtailment or change of activities of steel undertakings.

4. Public Support for Closure

Aid to meet closure costs additional to social costs mentioned in paragraph 3 to steel undertakings<sup>1</sup> which permanently cease steel production up to a maximum of the higher of the following two values:

- the discounted value of the contribution to fixed costs obtainable from the plants over a three year period less the advantages obtained by the firm from closure;
- the residual book value of the plants.

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<sup>1</sup>This provision does not authorize support to close plants or divisions, but only to close an entire company or enterprise.

## APPENDIX B

For the Government of Mexico:

1. Budget Transfers

The steel sector in Mexico is undergoing dramatic structural changes. This includes the privatization of some plants and the closing of inefficient plants, as well as the reduction of budget transfers to the public steel firms. The Government of Mexico commits itself not to increase the programmed budget transfers to the completion of the investment of the SICARTSA II project, estimated at 580 million dollars. The Government of Mexico will continue to meet its obligations to cover or guarantee the service payments of SICARTSA II current debt of \$1.6 billion, which will be paid according to schedule. Furthermore, the Government of Mexico will not provide budget transfers to AHMSA, SICARTSA I or any other company in the steel sector.

2. Financing

Mexico has complied with the terms of the bilateral Understanding concerning Subsidies and Countervailing Duties. The Government of Mexico and the Government of the United States agree to reach a mutually acceptable understanding regarding the appropriate benchmark interest rate covering the steel sector no later than the end of the Uruguay Round.

For the Government of the United States:

1. The benefits provided by Section 9303 (e)(3) of the Omnibus Budget Reconciliation Act of 1987 (24 USC Section 412) concerning reduced pension funding requirements for steel companies.
2. Any cost reductions or benefits under Chapter 11 of the Bankruptcy laws, 11 USC Sections 1101-1146, concerning voluntary bankruptcy proceedings.

## APPENDIX C

Concerning Article 2.3: The following definitions shall apply:

### Specificity of intervention:

The reference in Article 2.3 to intervention "specifically provided" to the steel industry includes intervention directed exclusively to the steel sector or to a small group of industries of which the steel industry is a part.

### Fiscal concession:

Included are all fiscal concessions of the aforementioned specific nature by which the steel industry is granted relief, fully or in part, from the general level of fiscal obligations toward the state applied uniformly across the economy (e.g. specific rates of depreciation, reductions in corporation taxes or in taxes on lands or buildings, etc.)

### Similar financing which cannot be regarded as a genuine provision of risk capital according to normal investment practice in a market economy:

Covered is the provision of capital of all kinds for the party in question from public resources, directly, e.g. in the form of grants or loans, or indirectly, e.g. in the form of state guarantees, contributed in circumstances that would not be commercially reasonable investment practice to a private investor operating in the economy in question.