

No. 25394

AUSTRALIA
and
UNITED STATES OF AMERICA

**Exchange of letters constituting an agreement concerning
trade in certain steel products (with arrangement).
Washington, 16 January 1985**

Authentic text: English.

Registered by Australia on 1 November 1987.

AUSTRALIE
et
ÉTATS-UNIS D'AMÉRIQUE

**Échange de lettres constituant un accord relatif au commerce
de certains produits d'acier (avec arrangement). Wash-
ington, 16 janvier 1985**

Texte authentique : anglais.

Enregistré par l'Australie le 1^{er} novembre 1987.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹
BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA CON-
CERNING TRADE IN CERTAIN STEEL PRODUCTS

I

16 January 1985

Excellency

I have the honour to refer to recent discussions held between representatives of the Government of Australia and the Government of the United States of America pursuant to the United States steel policy announced by the President of the United States on September 18, 1984, and title VIII of the Trade and Tariff Act of 1984. I have further the honour to confirm that the Government of Australia will implement its obligations under the attached Arrangement concerning trade in certain steel products between the Government of Australia and the Government of the United States.

I have further the honour to request that you confirm on behalf of the Government of the United States that it shall implement its obligations under the attached Arrangement and to propose that this letter, together with the attached Arrangement, and your letter in reply shall constitute an Agreement between the two Governments in accordance with the above provisions.

Accept, Excellency, the renewed assurances of my highest consideration.

[Signed]

KENNETH McDONALD
Chargé d'Affaires a.i.

His Excellency Robert E. Lighthizer
Deputy United States Trade Representative
Washington, D.C.

¹ Came into force on 16 January 1985, the date of the letter in reply, in accordance with the provisions of the said letters.

January 2, 1985

ARRANGEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING TRADE IN CERTAIN STEEL PRODUCTS

1. *Basis of the Arrangement*

Pursuant to the Government of the United States policy for the steel industry of September 18, 1984, and the authority provided in Section 805 of the Trade and Tariff Act of 1984; and recognizing the policy of both Governments that modernization of their steel industries should maximize adjustment based upon market forces; and recognizing Australia's position as a low volume supplier to regional markets in the United States of America (hereinafter called the "US"); and recognizing, therefore, the importance of stability in trade in certain steel products between Australia and the US;

The objective of this Arrangement is to create a period of trade stability in order to facilitate industry modernization. To this effect the Government of Australia shall restrain exports to or destined for consumption in the US of products described in Article 3 (a) originating in Australia (such exports hereinafter called "the Arrangement products") for the period October 1, 1984, through September 30, 1989.

2. *Condition-Withdrawal of Petitions: New Petitions*

(a) The entry into effect of this Arrangement is conditional upon:

(1) The withdrawal of the petitions and termination of all investigations concerning all countervailing duty and antidumping duty petitions listed in Appendix A before January 21, 1985.

(2) Receipt by the Government of the United States at the same time of an undertaking from all such petitioners not to file any petitions seeking import relief under United States law, including Section 201 of the Trade Act of 1984, Section 232 of the Trade and Expansion Act of 1962, countervailing duty, antidumping, Section 301 of the Trade Act of 1974 (other than Section 301 petitions relating to third country sales by United States exporters) or Section 337 of the Tariff Act of 1930, on Article 4 (a) Arrangement products during the period in which this Arrangement is in effect.

(b) (1) If during the period in which the Arrangement is in effect, any such investigations(*) or investigations under Section 201 of the Trade Act of 1974, Section 232 of the Trade Expansion Act of 1962, or Section 301 of the Trade Act of 1974 (other than Section 301 petitions relating to third country sales by United States exporters) are initiated or litigation (including antitrust litigation) instituted with respect to the Arrangement products, and the petitioner or litigant is one of those referred to in Article 2 (a), the Government of Australia shall be entitled to terminate the Arrangement with respect to some or all of the Arrangement products that are the subject of the investigation or litigation after consultations with the Government of the United States, at the earliest 15 days after the conclusion of such consultations. In the case of antidumping or countervailing duty investigations, the Government of Australia shall be entitled to terminate the Arrangement with respect to some or all of the Arrangement products that are the subject of the investigation after consultations with the Government of the United States, at the earliest 15 days

(*) With respect to any Section 337 investigation, the parties shall consult to determine the basis for the investigation except for patent or trademark infringements (note appearing in original text).

after either the issuance of a preliminary Department of Commerce determination or the conclusion of such consultations, whichever is later.

(2) If such investigations are initiated or litigation commenced, and the petitioner or litigant is not one of those referred to in the previous Article 2 (b) (1), the Government of Australia shall be entitled to begin consultations with the Government of the United States. Should the Government of the United States and the Government of Australia agree that this investigation or litigation threatens the attainment of the objective of this Arrangement, the Government of Australia shall be entitled to terminate the Arrangement with respect to the Arrangement product or products that are the subject of the investigation or litigation, at the earliest 15 days after the conclusion of such consultations. In the case of antidumping or countervailing duty investigations, should the Government of the United States and the Government of Australia agree that this investigation threatens the attainment of the objective of this Arrangement, the Government of Australia shall be entitled to terminate the Arrangement with respect to some or all of the Arrangement products that are the subject of the investigation after consultations with the Government of the United States, at the earliest 15 days after either the issuance of a preliminary Department of Commerce determination or the conclusion of such consultations, whichever is later.

(3) Consultations under this article, and on its applicability, shall take into account the nature of the petitions or litigation, the identity of the petitioner or litigant, the amount of trade involved, the scope of relief sought, and other relevant factors.

3. *Product Description*

(a) The products are:

- Coated sheet,
- Other flat rolled (including hot-rolled sheet and strip, cold-rolled sheet and strip, black plate, tin plate, plate, tin free steel, electrical sheet and strip and stainless flat rolled),
- Pipe and tube,
- Other finished steel (including structurals, fabricated structurals, wire rod, bar, sheet piling, rail and rail products, small bar shapes, reinforcing bar, hollow bar, hollow drill steel, wire, wire products, wire rope and wire strand),
- Semi-finished steel products,

as described and classified in Appendix B by reference to corresponding Tariff Schedules of the United States Annotated (TSUSA) item numbers and Australian export classification numbers.^(*) All products classified in each covered TSUSA item number by the United States Customs Service [are] subject to this Arrangement.

4. *Export Limits*

(a) For the period October 1, 1984, through December 31, 1985 (hereinafter called "the initial period"), and thereafter for each of the calendar years 1986 through 1988 and for the period January 1, 1989, through September 30, 1989 (hereinafter

^(*)These numbers are subject to revision when the Government of the United States or the Government of Australia adopts modifications to the applicable import or export nomenclatures (note appearing in original text).

called “the end period”), export permits and certificates shall be required for Arrangement products. However, products exported from Australia on or after October 1, 1984, and prior to February 1, 1985, may be admitted without an export permit and certificate. Such permits and certificates shall be issued to Australian exporters for each of the following product categories in quantities no greater than the following percentages of the projected United States Apparent Consumption for each product category (hereinafter called “export ceilings”) for the relevant period:

<i>Product category</i>	<i>Percentage</i>
Coated sheet	0.98
Other flat-rolled	0.08
Pipe and tube	0.16
Other finished steel	0.05

The tonnage of Arrangement products that were exported on or after October 1, 1984, and prior to February 1, 1985, without a certificate from Australia to the US or destined for consumption in the US shall be counted towards the initial period export ceiling for each Arrangement category. The tonnage so exported shall be determined on the basis of United States import invoice data sorted by export date. Date of export for pre-certificated shipments under this Arrangement shall be that established by the United States Customs Service. Date of export for all other shipments exported under the provisions of this Arrangement shall be that established by Australian Customs at the time of exportation. No later than July 31, 1985, the Government of the United States shall notify the Government of Australia of the amount of tonnage exported or on after October 1, 1984, but without a certificate.

Prior to the determination of the amount of tonnage which was exported without a certificate the Government of Australia may issue certificates and permits for no more than 50 percent of its initial period ceiling for each Arrangement product category. If pre-certificated shipments of an Arrangement product category exceed 50 percent of the product’s initial period ceiling, the overage shall first be counted against export permits and certificates that have not been issued for the initial period. To the extent that export permits and certificates have already been distributed in such a way as to cause Australian exports to exceed the agreed limits for the initial period, the coverage that has not yet been accounted for shall be subtracted from the product’s ceiling in the subsequent annual period.

For the purposes of this Arrangement, “United States Apparent Consumption” shall mean shipments (deliveries) minus exports plus imports, as described in Appendix D.

(b) For the initial period and thereafter for each of the calendar years 1986 through 1988 and for the end period, export permits and certificates shall be required for semi-finished steel products. However, such products exported from Australia on or after October 1, 1984, and prior to February 1, 1985, may be admitted without an export permit and certificate. Export permits and certificates shall be issued to Australian exporters of semi-finished steel products in quantities not greater than:

<i>Period</i>	<i>Net tons</i>
Initial period	62,500
1986	50,000
1987	50,000
1988	50,000
End period	37,500

The tonnage of semi-finished steel products that were exported on or after October 1, 1984, and prior to February 1, 1985, without a permit from Australia to the US or destined for consumption in the US shall be counted towards the initial period allowable tonnage for semi-finished steel products. The tonnage so exported shall be determined on the basis of United States import invoice data sorted by export date. No later than July 31, 1985, the Government of the United States shall notify the Government of Australia of the amount of tonnage exported on or after October 1, 1984, without a certificate. Prior to the determination of how much tonnage was exported without a certificate the Government of Australia may issue certificates and permits for no more than 50 percent of the allowable initial period tonnage for semi-finished steel products. If pre-certificated shipments of semi-finished steel products exceed 50 percent of the allowable tonnage in the initial period, the overage shall first be counted against export permits and certificates that have not yet been issued. To the extent that export permits and certificates have already been distributed in such a way as to cause Australian exports to exceed the agreed limits for the initial period, the overage that has not yet been accounted for shall be subtracted from the allowable tonnage in the subsequent annual period.

(c) Where Arrangement products imported into the US are subsequently re-exported therefrom, without having been subject to substantial transformation, the export ceiling of allowable tonnage for such products for the period corresponding to the time of such re-export shall be increased by the same amount.

(d) For the purposes of this Arrangement, the US shall comprise both the United States Customs Territory and United States Foreign Trade Zones, and entry of merchandise into the US shall include admission of merchandise into a Foreign Trade Zone. In consequence the importation into the United States Customs Territory of Arrangement products which have already entered into a Foreign Trade Zone shall not then be again taken into account as imports of Arrangement products.

5. Calculation and Revision of United States Apparent Consumption Forecast and of Export Limits

The Government of the United States, with advice from the Government of Australia, shall select an independent forecaster which shall provide the estimate of United States Apparent Consumption for the purposes of this Arrangement.

A first projection of United States Apparent Consumption for the initial period, by product categories for each Article 4 (a) Arrangement product category, shall be established as early as possible and in any event before January 1, 1985. The figures for projected 1985 apparent consumption shall be revised in February, May, August and October of 1985, by independent forecaster, and appropriate adjustments shall be made to the export ceilings for each Article 4 (a) Arrangement product category taking into account permits already issued. Export ceilings calculated for the initial period based on the February, May, August and October forecasts shall use actual October 1, 1984, through December 31, 1984, United States Apparent Consumption.

For subsequent annual periods, a first projection of United States apparent consumption by Article 4 (a) Arrangement product category shall be established by October of the preceding year. These figures shall be revised in December of the previous year and February, May, August and October of each year.

For the end period, a first projection of United States apparent consumption by Article 4 (a) Arrangement product category shall be established by October of 1988.

These figures shall be revised in December 1988 and February, May and August of 1989.

By May 1 of each year as from 1986, adjustments to that year's ceiling for each Article 4 (a) Arrangement product category shall be made for differences between the forecasted United States apparent consumption and actual United States apparent consumption of that product category in the previous period.

6. *Export Permits and Certificates*

(a) By decisions and regulations to be published in the Commonwealth of Australia Gazette, the Government of Australia shall require an export permit and certificate for all Arrangement products. Such export permits and certificates shall be issued so that no more than 60 percent allowable Australian exports of any Arrangement category shall be shipped to the US in any two consecutive quarters without the prior agreement of the Government of the United States. The Government of Australia shall take such action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the export permits and certificates. The Government of Australia shall inform the Government of the United States of any violations concerning the export permits and certificates which come to its attention and the action taken with respect thereto. The Government of the United States shall inform the Government of Australia of any violations concerning the export permits and certificates which come to its attention and the action taken with respect thereto.

Export permits shall provide that shipment must be made within a period of three months or less.

Export permits shall be issued against the export ceiling for the initial period, a specific calendar year or the end period as the case may be. With the agreement of the Government of the United States export permits may be used as early as November 15 of the previous period within a limit of five (5) percent of the ceiling for the given period. Each such advance use permit and certificate derived therefrom shall be so marked. Export permits may not be used after December 31 of the period for which they are issued, except that with the agreement of the Government of the United States permits not so used may be used during the first two months of the following period up to five (5) percent of the export ceiling in the previous year or five (5) percent of eighty (80) percent of the export ceiling in the initial period as the case may be. Each such carry over permit and certificate derived therefrom shall be so marked.

The Government of the United States, with the advice of the Government of Australia, may agree to increase the above percentage limits.

(b) The Government of Australia shall require that Arrangement products shall be accompanied by a certificate substantially in the form set out in Appendix C, endorsed in relation to such a permit. The certificate must contain an official Australian Customs stamp and indicate the day, month and year in which the Arrangement products were exported, the Arrangement category and tonnage exported. The Government of the United States shall require presentation of such a certificate as a condition for entry into the US of the Arrangement products. The Government of the United States shall prohibit entry of such products not accompanied by such a certificate.

7. *Technical Adjustments*

(a) The specific product category export ceilings provided for in Article 4 (a) may be adjusted by the Government of Australia with the agreement of the Government of the United States. Adjustments to increase the volume of one product category must be offset by an equivalent volume reduction for another product category for the same period. Notwithstanding the preceding sentences, no adjustment may be made under this article which results in an increase or a decrease in a specific product category limitation under Article 4 (a) by more than five (5) percent by volume for the relevant period.

The Government of the United States, with the advice of the Government of Australia, may agree to increase the above percentage limit.

(b) Agreement to make one change in each specific product category export ceiling in a given year, the initial period, or the end period shall be granted automatically by an adjustment under the preceding article or use of permits in November/December or January/February under Article 6 (a). Such agreement shall be deemed to be granted upon receipt by the Government of the United States of a request from the Government of Australia.

Accordingly, requests to use more than one of these provisions for one category in a given year must be submitted by the Government of Australia to the Government of the United States no later than October 1 of the period for which the request is made. Such requests should indicate the tonnages involved by Arrangement category and flexibility provision.

8. *Short Supply*

If the Government of the United States in consultation with the Government of Australia determines that because of abnormal supply or demand factors, the United States steel industry shall be unable to meet demand in the US for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products by a special issue of permits limited to 10 percent of Australia's unadjusted export ceiling for that product or products. In extraordinary circumstances as determined by the Government of the United States in consultation with the Government of Australia the Government of the United States shall increase the allowable level of special permits. Requests for short supply should at a minimum contain the information described in Appendix E.

Each authorized special issue export permit and certificate derived therefrom shall be so marked. Each such permit must be issued within 30 days of authorization unless the Government of the United States agrees to extend.

9. *Monitoring*

The Government of Australia shall within one month of the end of each quarter or upon request and for the first time by April 30, 1985, supply the Government of the United States with such non-confidential information on all export permits and certificates issued for Arrangement products as is required for the proper functioning of this Arrangement. This information shall include as a minimum each permit number, certificate number, quantity, date of export and Arrangement category.

The Government of the United States shall collect and transmit quarterly or upon request to the Government of Australia all non-confidential information relating to certificates received during the preceding quarter in respect of the Arrange-

ment products. The Government of the United States shall also collect and transmit non-confidential information relating to actions taken in respect of Arrangement products for violations of United States Customs Laws.

10. *Consultations*

Quarterly consultations shall take place between the Government of Australia and the Government of the United States on any matter arising out of the operation of the Arrangement. Consultations shall be held at any other time at the request of either the Government of Australia or the Government of the United States to discuss any matters including trends in the importation of Arrangement products which impair or threaten to impair the attainment of the objective of this Arrangement.

11. *Shifts in Product Mix within Arrangement Categories*

If imports from Australia of a product (e.g., alloy products) within an Arrangement category show a significant increase over the average United States market share of the product for the base period January 1, 1983, through September 30, 1984, indicating the possibility of the shifting of product mix within the same Arrangement product category, consultations shall be held promptly upon request between the Government of the United States and the Government of Australia with the objective of determining whether such shifting has occurred, and, if so, reaching agreement on preventing such shifting.

Should these consultations demonstrate that there has indeed been a shifting of product mix within one or more Arrangement categories which is such as to impair the attainment of the objective of the Arrangement, then within 60 days of the request for consultations the sides shall take the necessary measures for the products concerned in order to prevent such shifting. Such measures shall include the creation of separate Arrangement categories for imports of each product that has shown a significant increase over the base period. For purposes of Article 4, the percentage or allowable tonnage for each separate Arrangement category shall reflect the market share or tonnage in the base period.

12. *Scope of the Arrangement*

This Arrangement shall apply to the United States Customs Territory (except as otherwise provided in Article 4 (d)) and to the Customs Territory of Australia.

13. *Notices*

For all purposes hereunder the Government of the United States and the Government of Australia shall be represented by and all communications and notices shall be given and addressed to:

For the Government of Australia:

Secretary
Department of Trade
Canberra, ACT 2600
Australia

For the Government of the United States

Assistant United States Trade Representative for Industrial Trade Policy
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20506

Deputy Assistant Secretary for Import Administration
United States Department of Commerce
14th and Constitution Ave. NW
Washington, D.C. 20230

APPENDIX A

LIST OF ANTIDUMPING DUTY (AD) AND COUNTERVAILING DUTY (CVD)
PETITIONS(*) TO BE WITHDRAWN

— AD petition filed on February 10, 1984, by United States Steel Corporation concerning galvanized sheet.

APPENDIX B¹

IMPORTS BY CATEGORY

APPENDIX C. COMMONWEALTH OF AUSTRALIA¹

STEEL EXPORT CERTIFICATE U.S.A.

APPENDIX D¹CONCORDANCE OF U.S. SHIPMENTS, IMPORTS, AND EXPORTS
AUSTRALIAN ARRANGEMENT CATEGORIES

(*) For purposes of this Arrangement, the term "petitions" covers all matters included in the petitions filed on the dates listed, whether or not the DOC initiated investigations on the products or countries concerned (note appearing in original text).

¹ Appendices B, C and D are not published herein in accordance with article 12 (2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations as amended in the last instance by General Assembly resolution 33/141 A of 19 December 1978.

APPENDIX E

I. If the requestor of short supply is a foreign company through the Government of Australia, the request should include as a minimum the following:

- Exact specifications of the product for which the request is made, including dimensions and metallurgical specifications, a list of TSUSA item numbers under which the product can be imported and the appropriate Arrangement category.
- Total Australian export ceiling in the appropriate period and shipments made in the period to date, including each Australian producer's share of the ceiling and shipments made in the period to date.
- The proportion of each Australian producer's ceiling of the Arrangement category affected by the request allocated to the product for which the request is made. An explanation as to why this proportion cannot be greater, including the historical proportion for each producer.
- A list of the names of all United States buyers of the product for which the request is made that each Australian company has been unable to supply because of the ceiling, including details of proposed transactions such as terms of sale and the tonnages involved.
- A list of all Australian sales to United States customers of the product for which the request is made in the last three years, indicating the buyers, terms of sale and the tonnages involved.
- The requestor's estimate of the operating rates of United States producers of the product for which the request is made, and an explanation as to why the requestor believes these figures demonstrate the existence of short supply.
- Other information available to the requestor, such as that pertaining to allocation or delivery times, that the requestor believes demonstrates the existence of short supply.

II. If the requestor of short supply is a United States company, the request should include as a minimum the following:

- Exact specifications of the product for which the request is made, including dimensions and metallurgical specifications, a list of TSUSA item numbers under which the product can be imported and the appropriate Arrangement category.
- A list of all United States producers of the product for which the request is made from whom the product has been purchased in the past three years, indicating the tonnages involved.
- A list of all United States and foreign producers of the product for which the request is made that have refused to sell the product in the last three years, indicating the reason for the refusal.
- A list of all offers to sell the product for which the request is made by United States and foreign producers in the last three years, that have been rejected by the requestor, indicating the proposed terms of sale and the reason for the rejection.
- A list of other United States consumers of the product for which the request is made, including supporting statements indicating all United States and foreign producers of the product for which the request is made that have refused to sell the product in the last three years, indicating the reason for the refusal.
- The requestor's estimate of the operating rates of United States producers of the product for which the request is made, and an explanation as to why these figures demonstrate the existence of short supply.
- Other information available to the requestor, such as that pertaining to allocation or delivery times, that the requestor believes demonstrates the existence of short supply.

II

DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C.

January 16, 1985

Dear Mr. McDonald:

I have the honor to refer to your letter of January 16, 1985, which reads as follows:

[*See letter I*]

and the attached agreements between the Government of Australia and the Government of the United States of America concerning trade in certain steel products.

I have also the honor to confirm on behalf of the Government of the United States that it shall implement its obligations under the Arrangement referred to in your letter which is also attached and that your letter together with the attached Arrangement and this reply shall constitute an agreement between the two Governments.

Accept the renewed assurances of my highest consideration.

[*Signed*]

R. LIGHTIZER

Mr. Kenneth McDonald
Chargé d'Affaires a.i.
Embassy of Australia
Washington, D.C.
