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Steel Industry and Trade Issues

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Summary

The U.S. steel industry has faced increasing difficulties since the late 1990s. More than 30 U.S. steel producers, including Bethlehem, LTV, National, and Wheeling Pittsburgh, have gone into bankruptcy and some have ceased operating. While different companies and parts of the industry have been affected to different degrees, active and retired steelworkers and their union representatives have become particularly concerned about the industry's possible inability to continue to fund pension and healthcare benefit commitments (an issue known as "legacy costs").

U.S. policymakers have responded with a variety of measures. The House of Representatives in early 1999 approved a bill that would have required the President to take measures that would have rolled back imports to a level prevailing before a 1997-98 import surge. The Clinton Administration responded with expedited enforcement of U.S. antidumping and countervailing duty laws, as well as a Section 201 trade case focused on wire rod and line pipe products. The 106th Congress also approved and President Clinton signed laws to establish a steel loan guarantee program and to distribute to petitioners penalty duties from antidumping and anti-subsidy trade cases, including those involving steel. These measures did not prevent a new downturn in the domestic industry in 2001.

In the 107th Congress, a broader version of the 1999 import quota bill was reintroduced and gained a majority of the House as co-sponsors. Pressed to act by Members of Congress, steel companies and labor representatives, President Bush in June 2001 requested the U.S. International Trade Commission (ITC) to undertake a broad Section 201 trade investigation on the steel industry. The ITC decided that a substantial part of the industry is being injured by increased imports and recommended relief measures to President Bush. President Bush on March 5, 2002, decided to impose three-year remedy tariffs with top rates of 30%. Some Members of Congress, economists and representatives of steel-consuming industries have expressed concerns that measures to aid the industry will have a negative impact on the competitiveness of a broad range of U.S. businesses. Supporters of government assistance for legacy cost relief have introduced legislation, now that President Bush has acted on remedy tariffs under Section 201.

The Section 201 trade case is one element of an Administration strategy concerning steel, which includes a multilateral international negotiation on global overcapacity in the steel industry and future rules for world steel trade. U.S. and other countries' negotiators have discussed worldwide capacity reductions in the forum of the OECD steel committee in Paris, and have so far offered possible cuts of more than 100 million metric tons by 2005. Meanwhile, U.S. trading partners are challenging the Section 201 measures under WTO rules.

This report examines the recent performance of the U.S. steel industry, the Bush Administration Section 201 initiative, and measures in Congress addressing other aspects of problems in the steel industry. The report will be updated as events warrant.

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Steel Industry and Trade Issues

Background and Issues

Since the late 1990s, the U.S. steel industry has experienced increasing difficulties. Much of the industry has been in serious trouble since the financial crises of 1997-98 in Asia, Russia, and Latin America contributed to a rise in U.S. steel imports. After reactions from the Clinton Administration and Congress, imports fell in 1999 and the domestic steel industry staged a partial recovery by early 2000. However, this recovery was undermined by a renewed rise in imports, by a suddenly slowing domestic U.S. economy, and by the big rise in energy prices that affected the energy-intensive steel industry in 2000. The exchange rate of the U.S. dollar also increased nearly 30% in value against a range of other currencies after early 1997, making U.S.-produced steel less price-competitive.[1]

Some commentators also say that there are still too many older, inefficient domestic mills that are not competitive with newer, more productive plants here and abroad, and that contracted wage and benefit costs are obstacles to restructuring, consolidation, and modernization. Whatever the reasons, by 2002 more than 30 steel companies were in bankruptcy. Companies operating under Chapter 11 included Bethlehem Steel, Republic Technologies, Wheeling Pittsburgh, and National Steel, all well known and historic integrated producers. LTV, reportedly the third-largest U.S. integrated producer, has been liquidated under Chapter 7 of the bankruptcy code; Geneva Steel has at least temporarily ceased operating to conserve cash; and a number of minimills have also gone out of business. Without improved economic prospects, the industry is finding it difficult to raise the financing necessary for further restructuring and modernization. Also, many operating companies are finding it difficult to continue funding the pension and healthcare packages for steelworkers and retirees to which they agreed in the 1980s, at the time of a major industry restructuring, an issue now known as "legacy costs."

U.S. policymakers have responded to the problems of the industry with a variety of measures. The industry and the Commerce Department have filed dozens of antidumping and countervailing duty (AD/CVD) cases against foreign producers in recent years.[2] The 106th Congress passed and the President signed two laws

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[1]Exchange rate changes have affected the competitiveness of both integrated U.S. steel mills and minimills, with the potential impacts ranging from $66 to $164 per metric ton. Richard McLaughlin, "Exchange Rates Seen at the Heart of Steel's Woes," special report in *American Metal Market* (*AMM*), September 3, 2001.

[2]"Antidumping is relief to remedy the adverse price impact of imports sold on the U.S.

(continued...)

specifically designed to assist the industry, the Emergency Steel Loan Guarantee Act of 1999 (P.L. 106-51) and the Continued Dumping and Subsidy Offset Act, the latter added as an amendment to the FY 2001 Agriculture appropriations bill (P.L. 106-387). Moreover, the House overwhelmingly approved a steel import quota bill, which did not pass the Senate, but to which the Clinton Administration responded with a "Steel Action Program" in August, 1999.[3]

The continuing difficulties of the industry have ensured that steel-related issues remain of interest to the 107th Congress. A new and more far-reaching mandatory quotas bill (H.R. 808), which would also establish a steel sales tax to pay for legacy costs, was introduced in the First Session and had gained 228 co-sponsors in the House as of April 2002. A bill to deal with legacy costs at bankrupt or consolidated steel companies (S. 2189) was introduced on April 17, 2002, by the co-chairs of the Senate Steel Caucus and seven co-sponsors. Two similar bills were introduced shortly thereafter in the House (H.R. 4574 and H.R. 4646). Legislation to strengthen the steel loan guarantee program has become law, as a provision of the FY 2002 Interior appropriations bill (P.L. 107-63). Bills have been introduced in each body to make it easier for domestic industry to win trade remedy cases (H.R. 1988 and S. 979) and to enact relief for the upstream iron ore industry (H.R. 837 and S. 422).

Under increasing pressure from Congress, industry and labor, and after consultations with all three groups, President Bush took action under Section 201 of U.S. trade law. Such action, in conformity with the "safeguard" provisions of World Trade Organization (WTO) rules, allows a WTO member country to implement temporary trade relief for a domestic industry after finding that it has been injured by surging import levels. Under U.S. law, the presidential request went to the U.S. International Trade Commission (ITC), for an investigation to determine if high import levels are a substantial cause of injury to the U.S. industry. The ITC reported affirmatively that imports are substantially injuring a large part of the domestic industry and forwarded recommendations of relief to President Bush. The President on March 5, 2002, announced a series of remedy tariffs on steel products, which went into effect on March 20. The move was highly controversial among U.S. trading partners and many have requested consultations with the United States as a preliminary step to action under WTO rules.

In addition to this Section 201 case, President Bush has also inaugurated multilateral negotiations with other steel producing nations. The goals of these discussions are to address the overcapacity in global steel markets and to consider the

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[2](...continued)
market at unfairly low prices...Countervailing duty is relief from the adverse price impact of imports that receive foreign government subsidies." In both cases, the form of relief is extra duties on imports. CRS Report RL30461, *Trade Remedy Law in the 107th Congress*, by William H. Cooper, p. 3.

[3]The Clinton Administration's views and response to the industry's trade difficulties were summarized in a special report. U.S. Department of Commerce. *Global Steel Trade: Structural Problems and Future Solutions: Report to the President*, (July 26, 2000), [http://www.ita.doc.gov/media/steelreport726.html].

rules governing international trade in steel. They are being conducted in the forum of the Paris-based Organization for Economic Cooperation and Development.

The Bush Administration also followed up on other initiatives in place before it announced its decision to pursue the Section 201 case. The Customs Service has implemented the 2000 Continued Dumping and Subsidy Offset Act, under which proceeds of penalty duties were paid to successful petitioners in AD/CVD cases, including many steel companies. Eleven U.S. trading partners are challenging this law before the WTO. The Bush Administration has also completed an investigation under Section 232 of the 1974 U.S. Trade Act into the national security implications of imports of iron ore and semi-finished steel, which it initiated following a request from Members of Congress. The Commerce Department Bureau of Export Administration, which conducted the investigation, recommended against any action by the Administration under Section 232.

This report will review each of these issues in more detail.

- It will first review industry developments and the economic situation of the steel industry, including legacy costs;
- Second, the report will review the Section 201 case inaugurated by the Bush Administration, the President's decision on remedies, and the international response;
- Third, the report will review other policy measures initiated by Congress with respect to the steel industry.

The U.S. Steel Industry and Its Competitors

The Asian financial crisis began in Thailand in 1997 and quickly spread. It dampened demand for steel in that previously fast-growing region, and led Asian steelmakers to seek markets in the United States and Europe. By mid-1998, the financial crisis had spread to Russia and Brazil. These countries also sought to maintain steel production, in the face of domestic recessions and global oversupply of steel, by selling a larger share of their output to the United States. The result was a one-third increase in steel imports in 1998 over imports that were already near a record level in 1997. Japan, Korea, and Russia accounted for the largest share of increased imports (76%). Exacerbating the surge was the rising dollar that made low-priced foreign-produced steel even more competitive against U.S. products.

According to the Department of Commerce study, *Global Steel Trade: Structural Problems and Future Solutions*, the heavy volume of low-cost steel entering the U.S. market drove prices below levels at which U.S. producers could continue to make steel at a profit.[4] **Figure 1** shows the evolution of market supply in the 1990s. It indicates the total apparent U.S. consumption of steel (finished and

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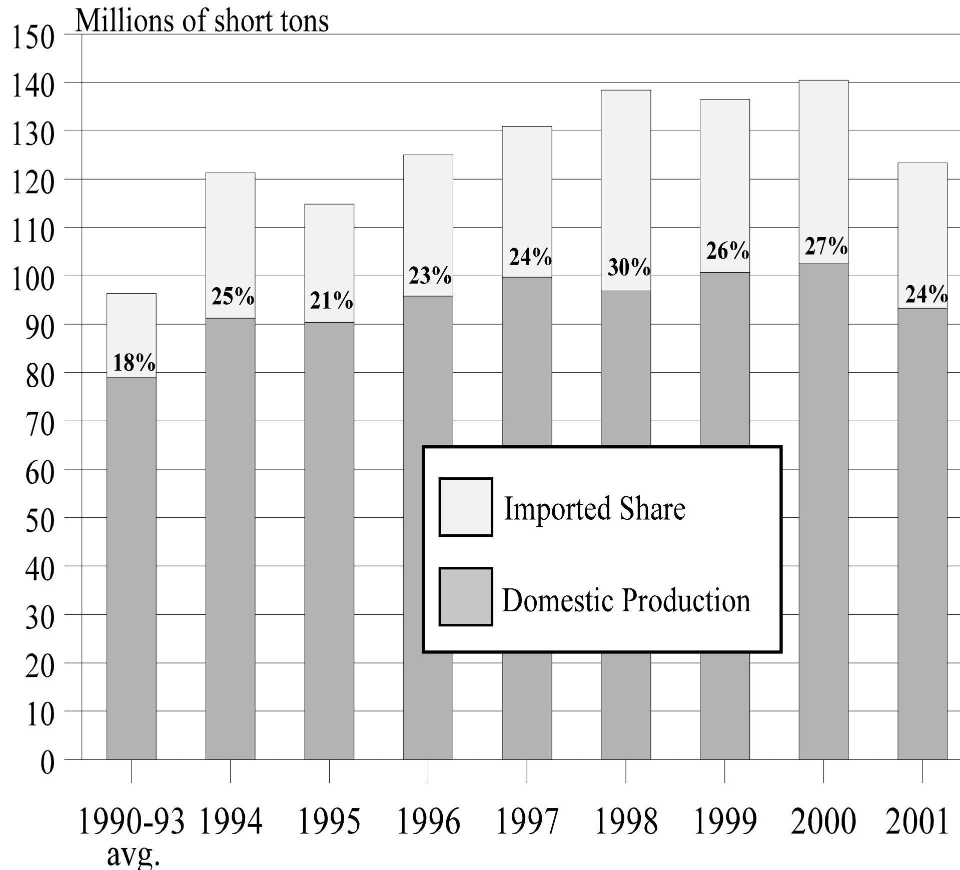
[4]*Global Steel Trade*, p. 27. A more recent detailed analysis of the industry's economic condition and the developments that led to the present situation is the ITC staff report, *Steel: Prehearing Report to the Commission on Investigation No. TA-201-73* (September 4, 2001).

semi-finished) for each year, and the share that was provided by imports.[5] Through 1992, the U.S. steel industry was still protected by voluntary trade restraint agreements negotiated in the 1980s. These were allowed to lapse after failure to negotiate a multilateral steel trade agreement.[6] Apparent consumption grew strongly in the mid-1990s. But imports accounted for more than half of the increase between 1990-93 average levels and the 1998 peak – and surging imports accounted for all of the net one-year growth in 1998, as they reached 30% of U.S. steel consumption.

Figure 1. U.S. Steel Consumption and Imports, 1990-2001



Source: American Iron & Steel Institute. *Annual Statistical Report*, 1999-2000, and December 2001 data.

[5]"Apparent domestic consumption" equals total domestic product shipments plus imports, minus exports.

[6]Gary Clyde Hufbauer and Ben Goodrich, *Steel: Big Problems, Better Solutions* Washington, DC: Institute for International Economics, International Economics Policy Brief no. PB01-9, July 2001, p. 1.

Some stakeholders have suggested that steel's problems in part are attributable to inefficient domestic mills ("unproductive domestic capacity"[7]). But a 1999 report by the ITC suggests that such an explanation in 1998 told only part of the story:

> Indeed, the same trends for the industry as a whole are also apparent in the separate results of both integrated mills and minimills. …In fact, minimills fared even worse than integrated mills from 1997 to 1998. …The worse financial performance of [minimill] producers reflects in part their greater dependence on the merchant market, where imports are concentrated.[8]

By mid-1998, U.S. companies were losing substantial market share to imports of cheaper foreign steel. Many previously profitable domestic steelmakers experienced a decline in sales revenue, operating income, and profit in 1998 and 1999. Some small companies experienced a loss of access to capital and liquidity problems, which forced many companies into bankruptcy.[9] Confronted with these problems, U.S. steel companies, steelworkers, and many Members of Congress argued that federal support for the steel industry and its workers was necessary. A number of measures were adopted to bolster the industry and to reduce the adverse impact of imports. But these measures did not avert a further worsening of conditions in the industry.

In September 1998, the steel industry filed antidumping cases with the ITC against hot-rolled steel from Brazil, Japan, and Russia and a countervailing duty case against Brazil. As the situation worsened in other product areas, additional petitions were filed. In response to the import surge, the Clinton Administration responded by conducting more than 100 AD/CVD investigations on steel products, a number of which were expedited to provide faster relief to industry. According to Robert LaRussa, then-Under Secretary of Commerce for International Trade, "these helped turn back massive import surges seen during the 1998 crisis."[10]

The Clinton Administration announced a Steel Action Program on August 5, 1999, which had three main elements that included: (1) vigorous enforcement of U.S. trade laws, including expedited investigations; (2) bilateral efforts to address the underlying problems that led to the crisis, including consultations with Japan and Korea, and an agreement with Russia to limit steel imports; and (3) improved import monitoring mechanisms to detect potential import surges. Moreover, the Congress passed, and the President signed, the Emergency Steel Loan Guarantee Act (August

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[7]Joseph B. Francois and Laura Baughman. *Costs to American Consuming Industries of Steel Quotas and Taxes*. Washington, DC. The Consuming Industries Trade Action Coalition. April 30, 2001. p. 1.

[8] U.S. International Trade Commission. *Certain Hot-rolled Steel Products from Japan,* Publication no. 3202 (June 1999), p. 19. Cited in *Global Steel Trade*, p. 27.

[9] *Global Steel Trade*. p. 34.

[10]U.S. Department of Commerce. International Trade Administration. *Testimony of Undersecretary Robert S. LaRussa before the Senate and House Steel Caucus*. December 12, 2000. (http://www.ita.doc.gov/media/larussa121200.htm).

17, 1999), which was designed to assist financing of troubled steel companies unable to obtain commercial loans at reasonable rates.[11]

Despite these measures, large parts of the U.S. steel industry have never fully recovered from the 1997-98 import surge. Steel imports initially fell in 1999 as a share of U.S. consumption, as shown in Figure 1. However, imports rose again in 2000 to 27%, 50% higher than the average 18% market penetration of the early '90's. With penetration levels at 25% or higher, imported steel captured much of the increase in demand for steel that accompanied the strong growth in the U.S. economy in the late 1990s. Many product areas experienced double-digit, or even triple-digit, one-year import percentage increases in 2000. Moreover, the increases were registered from a wide range of foreign sources.[12] But the same data source noted the substantial disagreement between domestic producers and users over the causes and nature of the problems of the U.S. industry. "Almost universally, U.S. steel producers blame the second-highest import year on record for their late-2000 financial losses. Steel importers disagree, saying the problems can be traced to early-2000 domestic price increases that made cheaper foreign-made steel more attractive."[13]

Domestic steel market growth ended abruptly in late 2000, as the manufacturing sector of the economy entered a recessionary period. In its early 2001forecasts, the economics consulting firm DRI projected a good-news, bad-news outlook for the steel industry. Under its most likely scenarios, imports would level off or fall – but partly because demand and prices in the U.S. market would likely remain depressed,

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[11] Section 101(b) of that Act contained a number of congressional findings, including –

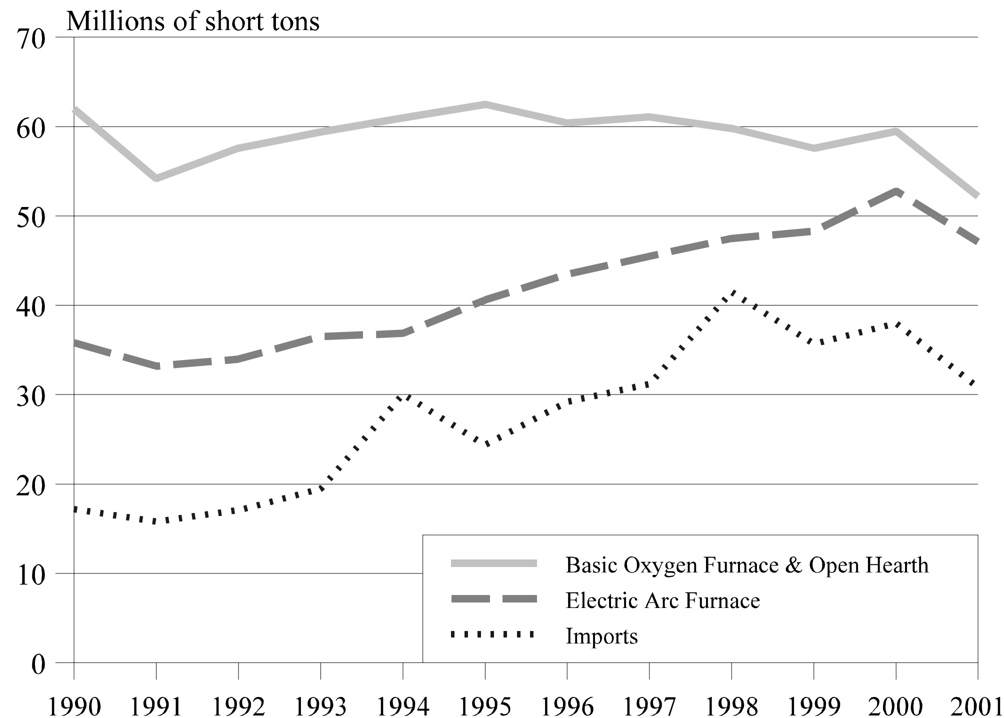
(1) the United States steel industry has been severely harmed by a record surge of more than 40,000,000 tons of steel imports into the United States in 1998, caused by the world financial crisis;
(2) this surge in imports resulted in the loss of more than 10,000 steel worker jobs in 1998, and was the imminent cause of three bankruptcies by medium-sized steel companies, Acme Steel, Laclede Steel, and Geneva Steel;
(3) the crisis also forced almost all United States steel companies into—
    (A) reduced volume, lower prices, and financial losses; and
    (B) an inability to obtain credit for continued operations and reinvestment in facilities;
(4) the crisis also has affected the willingness of private banks and investment institutions to make loans to the United States steel industry for continued operation and reinvestment in facilities;
(5) these steel bankruptcies, job losses, and financial losses are also having serious negative effects on the tax base of cities, counties, and States, and on the essential health, education, and municipal services that these government entities provide to their citizens; and
(6) a strong steel industry is necessary to the adequate defense preparedness of the United States in order to have sufficient steel available to build the ships, tanks, planes, and armaments necessary for the national defense.

[12] "Steel Imports the Second-Highest Ever in 2000," *Purchasing.com* (March 2001).

[13] *Ibid.*

and therefore, the market would be relatively less attractive to foreign exporters.[14] The industry recession which appeared to worsen after the impact of the September 11 terrorist attacks further delayed any recovery in the steel industry. Average steel industry capacity utilization through early August 2001 was 79%, down about 10 points from the same period in 2000, according to weekly American Iron & Steel Institute (AISI) figures. By late October, the capacity usage level fell to 65%.[15] Capacity usage rates for November and December 2001 continued at similar levels, though they rose again into the high 80s after LTV's closure and Geneva Steel's temporary shutdown took their facilities offline. Prices also generally firmed following these developments.[16] For the week ending March 23, 2002, the capacity utilization rate increased to 92.5%, the first time it had been above 90% since May 2000. AISI commented, "The figure is higher in part because there is less capacity overall in operation. Nevertheless, it does reflect some increase in optimism based on improved order books and expectations that the 201 remedy will benefit the health of domestic steelmakers." Even so, domestic shipments for the first two months of 2002 were less than in 2001.[17]

Figure 2. Sources of U.S. Steel



Source: DRI/WEFA. *Steel Industry Review*; and, American Iron & Steel Institute (December 2001 monthly statistics).

Figure 2 illustrates a point made frequently in the policy sections of this report

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[14]DRI-WEFA. *Steel Industry Review*, summary forecasts at p.1 for the 1st and 2nd quarter editions, 2001.

[15]*AMM*, August 8, 2001 and October 31, 2001.

[16]*AMM*, January 7and 10, 2002; *Wall St. Journal*, January 10, 2002.

[17]AISI. *Steelworks News Digest*, March 27 and April 11, 2002.

that follow. The impact of trade and industry problems for steel has not been even across the sector. The production of the large integrated mills using mostly basic oxygen furnaces (the last U.S. open hearth plant closed in 1991) between 1990 and 2000, generally hovered around 60 million short tons per year. Minimills employing electric-arc furnaces and reprocessing steel from scrap steadily increased production after the recession of 1991. Their market share is shown to have topped 50 million tons for the first time in 2000, when it reached almost 50% of domestic raw steel production, up from 37% at the beginning of the 1990s. DRI projects that minimills will slowly pull ahead over the coming decade.[18] Figure 2 also shows the import trend generally increasing, so that the integrated mills are under competitive pressure for some products from two different sources. Hence, the integrated mills and minimills have conflicting views on some policy issues, though both types of producers supported the Section 201 investigation of the industry and high levels of remedy tariffs.

For 2001, Figure 2 shows that minimill shipments, integrated steel mill shipments and imports all declined in a down market. While this parallel decline is clearly attributable to market conditions, the sharpest fall was in imports. They decreased by 19%, or 8 million tons, according to AISI figures, compared to 11-12% (5-7 million tons) for domestic minimill and integrated production. This circumstance may also reflect the cumulative impact of numerous U.S. AD/CVD actions. U.S. trading partners and importers argued during the Section 201 case and in response to the presidential decision that the 2001 decline in imports undermines the U.S. justification for a separate and broad safeguard action under Section 201.

Table 1 provides details on individual company production data for 2000 and 2001, as published recently by *American Metal Market*. The big news from this table is that in 2001the leading North American steel producer for the first time was a minimill producer, Nucor. The Charlotte-based company, with operations in eight states, ended a century of leadership in production by the largest integrated steel producer, United States Steel Corporation. Nucor, which has been acquiring minimills as well building new plants of its own, gained the leadership by a wide margin, outproducing U.S. Steel by more than 20% in tonnage in 2001. Moreover, in May 2002, Nucor signed a letter of intent to purchase most of the assets of Birmingham Steel, the financially troubled second-leading U.S. minimill steel operator.[19]

But aside from Nucor, the remaining top-ten North American producers are primarily integrated mill operators. And three out of the next four U.S.-based companies in terms of production output (Bethlehem, LTV and National Steel, the U.S. affiliate of Japan's NKK) are in bankruptcy. LTV Steel has gone into liquidation, although the acquiring firm, W.L. Ross & Co., has indicated that it plans to restart at least some of the facilities as the "International Steel Group."[20] While overall production declined by about the same rate in 2001 at both minimills and

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[18]DRI-WEFA. *Steel Industry Review* (2nd qtr., 2001), Tables 2 and 4.

[19]*Financial Times*, May 22, 2002.

[20]*Business Week*. "Bullish on Bankruptcy," (April 1, 2002) pp. 70-71; *AMM*, Mar. 26, 2002; *Chicago Sun-Times*, February 28, 2002.

integrated plants, both long-term production trends and the current financial position seem to favor the minimills among U.S. producers.

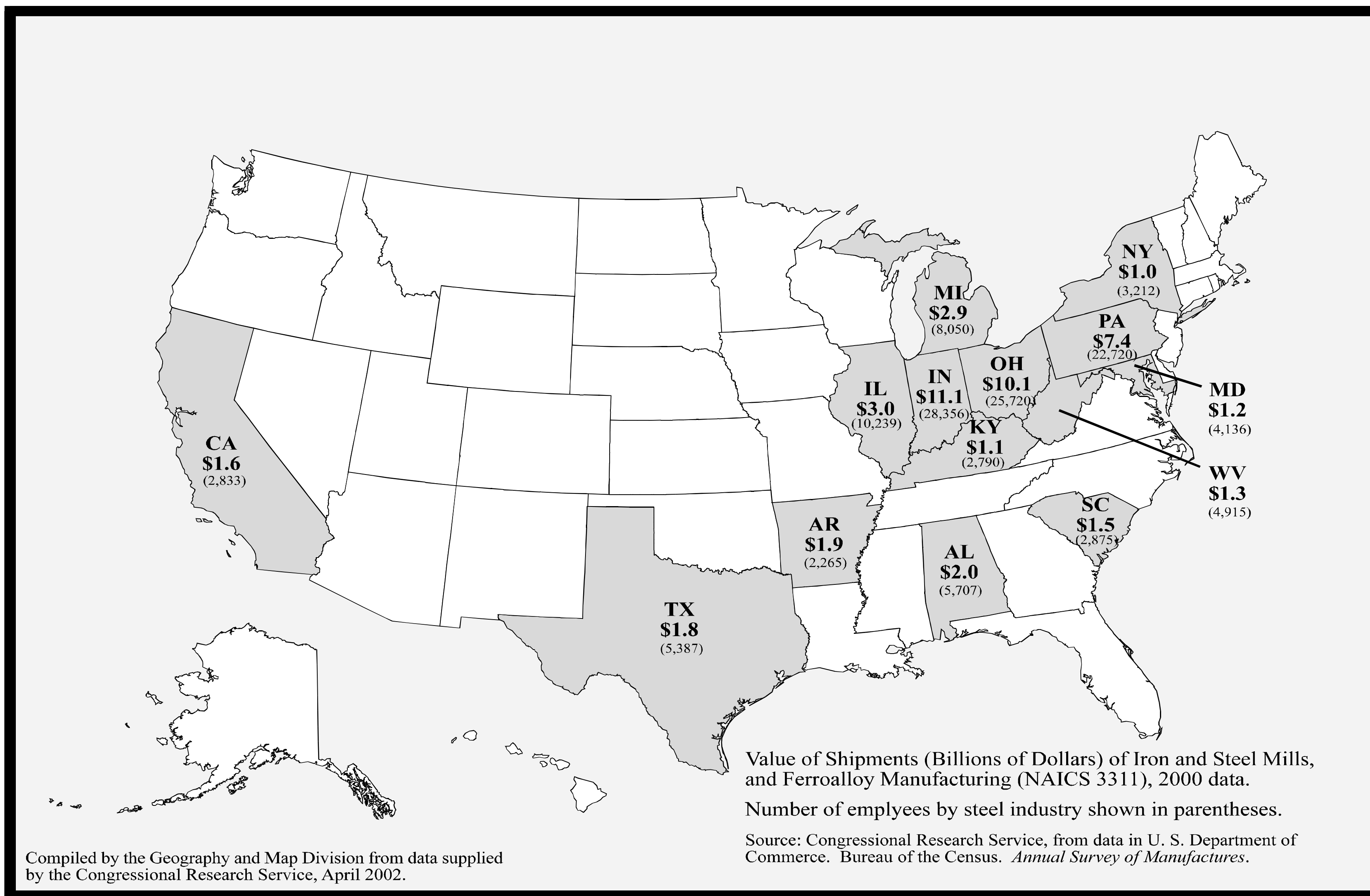
Table 1. Major North American Steel Companies
(Companies producing at least 2.0 million net tons of raw steel in 2001)

	2000	2001
Nucor Ⓜ	11.3	12.3
U.S. Steel	11.4	10.1
Ispat International*	— —	10.0
Bethlehem ■	10.0	8.8
LTV ■■	8.2	6.5
AK **	6.5	6.1
National ■	6.1	6.0
Stelco	5.6	5.0
Dofasco	4.5	4.5
Ahmsa	3.7	3.3
Rouge	2.9	2.8
Birmingham Ⓜ	3.1	2.5
Hylsa	3.1	2.5
Ipsco Ⓜ	2.0	2.4
North Star Ⓜ	2.9	2.4
Weirton	2.5	2.4
Villacero	2.4	2.4
Co-Steel Ⓜ	2.9	2.3
Wheeling-Pittsburgh ■	2.4	2.3
Algoma ■	2.4	2.2
Steel Dynamics Ⓜ	2.0	2.0

* *American Metal Markets* estimate of 2001 production of three North American operating units (March 18, 2001).
** AK totals estimated by *American Metal Markets*.
■ Steel company operating under Chapter 11 bankruptcy statutes, as of March 1, 2002. (Algoma emerged from reorganization under Canada's Companies Creditors' Arrangements Act on January 29, 2002.)
■■ Steel company in liquidation, as of March 1, 2002.
Ⓜ Minimill operator
Source: *American Metal Markets*, March 11 and 18, 2002.

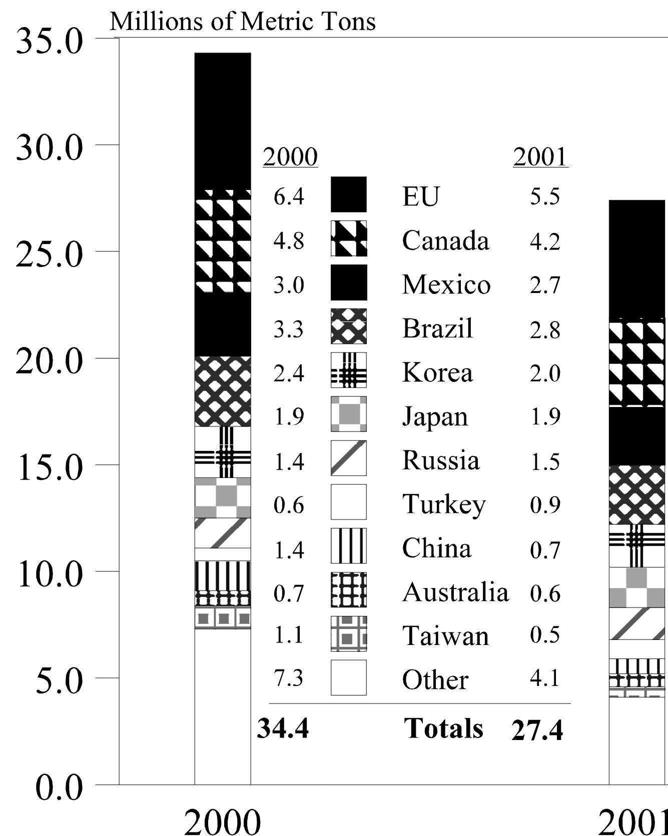
Figure 3 displays the economic significance of the domestic steel industry for various states and regions. It shows the 14 states that each shipped more than $1.0 billion of steel and related ferroalloy products, according to the Census Bureau's *Annual Survey of Manufactures* (*ASM*) in 2000. Three states – Indiana, Ohio and Pennsylvania – shipped the majority of U.S.-produced steel, by value. They also accounted for 76,000 of 144,000 total employees in the steel industry, according to the *ASM*. These states, plus, to a lesser extent, Maryland, Illinois and West Virginia, are home to most of the U.S. integrated steel mills. Arkansas, South Carolina and Kentucky are particularly the location of many of the steel minimills, while Alabama's production is divided between a number of minimills and an integrated steel mill complex near Birmingham.

Figure 3. Top Steelmaking States



The steel industry's demand for Section 201 protection conflicted with the interests of a wide range of U.S. trading partners. **Figure 4** shows trading partners that exported at least 500,000 tons of steel to the United States in 2001 and their 2000 import totals as well (note that international data, as used in this figure, are in metric tons, not short tons). The overall volume of steel imports in 2001 declined by more than 20%, from 34.4 million MT to 27.4 million MT. Nevertheless, Figure 4 shows that countries for which the U.S. market remains significant represent a diverse group, representing a wide range of geography, development levels and U.S. policy interests.

Figure 4. Sources of U.S. Steel Imports



Source: U.S. Census Bureau. Imports of Steel Products (December 2001 final).

The **European Union** is a high-wage trading area with a mature steel industry facing some of the same problems as parts of the U.S. industry. Yet, the EU was actually the largest source of U.S. imported steel, 5.5 million MT in 2001, 22.5% of total imports, compared to 6.4 million MT in 2000. The leading European exporter to the United States was **Germany** with 1.5 million MT, nearly twice the total of any other EU member. **France** was second at 800,000 MT, while **Netherlands**, **Italy**, the **U.K.**, **Spain** and **Belgium** all exported about 400-500,000 MT. **Sweden**, **Austria** and **Luxembourg**, not listed here, were also important suppliers especially of lower-tonnage but higher-value specialty products. U.S. figures show the value of EU imports to have been more than $4.0 billion in 2000 and about $3.4 billion (29% of the total) in 2001. The European Commission has claimed that the structure of the Section 201 tariff remedies and exclusion of EU members from any national

exemptions will unfairly target their products. They say that the total trade compensation for affected exports under WTO Safeguard Agreement rules would be approximately $2.5 billion.[21]

Our North American Free Trade Agreement (NAFTA) partners, **Canada** (4.2 million MT) and **Mexico** (2.7 million MT), ranked second and fourth among steel exporters to the United States in 2001. They were exempted by the Clinton Administration from the limited Section 201 trade actions in 2000, but were included by the ITC in some of its injury determinations under the Section 201 case. Their steel industries are closely integrated with the U.S. market and Table 1 showed that many of the largest North American steel producers are Canadian and Mexican companies (Stelco, Dofasco, Ahmsa, Hylsa, Villacero and Algoma). U.S. industry stakeholders were divided in their views on how to deal with them under Section 201. AISI called for NAFTA trading partners to be excluded from U.S. trade remedies, while the United Steelworkers union asked to exempt Canada, but to include Mexico in Section 201 trade relief.[22] President Bush exempted all Canadian and Mexican products from the Section 201 remedy measures.

Brazil ranked third in 2001with 2.8 million MT in steel exports to the United States. Brazil's industry has been fully privatized. It went through a period of substantial modernization and consolidation since 1990, with 34 companies reduced to a total of 12, controlled by seven groups. Employment was reduced by more than 60%, with more than 110,000 jobs eliminated. Although Brazil has a large and growing domestic market, one-third of its 27 million MT in output was exported in 2001, about 40% to North America. Brazil is especially important as a supplier of semi-finished slabs to the U.S. market; two-thirds of Brazil's steel exports are semi-finished products.[23] Brazilian companies have made substantial direct investments in the U.S. market, including California Steel Industries, a major West Coast rolling mill. Gerdau, Brazil's largest minimill operator, has acquired a total of seven U.S. and Canadian minimills. CSN of Brazil, which recently acquired Heartland Steel of Indiana, has also been reportedly involved in discussions to acquire a joint venture position at the Baltimore facilities of Bethlehem Steel.[24] The U.S. and Brazil are scheduled to co-chair the Free Trade Agreement of the Americas (FTAA)

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[21]This was the initial level of retaliatory sanctions that the European Commission proposed in connection with its complaints against the U.S. Section 201 trade action. BNA. *Daily Report for Executives* (*DER*), "EU Plans to Aim $2.5 Billion in Sanctions at U.S. Areas in Favor of Steel Safeguards," March 25, 2002.

[22]"AISI Chairman Says Section 201 Relief Should Exclude NAFTA Partners," BNA,, May 15, 2001; *AMM*, June 27, 2001. The USWA also went to federal court to challenge the constitutionality of the "fast-track" process by which NAFTA was created. The Supreme Court on Nov. 26, 2001, let stand an appeals court ruling that dismissed the suit as a nonjusticiable political question. *DER*, "Justices Let Stand Court's Dismissal of Steelworker Union's Challenge to NAFTA," November 27, 2001.

[23]Brazil data from Instituto Brasileiro de Siderurgia. *The Brazilian Steel Industry: Competitive in an Open Global Market* (Dec. 2001) and *Pocket Yearbook 2002*.

[24]*AMM*, March 27, 2002.

negotiations from 2003, creating a special incentive for the Bush Administration to remain on good terms with Brazil in trade policy issues.[25]

In 2000, the three leading Asian suppliers were **Korea**, with 2.4 million MT, **Japan** (1.9 million MT) and **Taiwan**, at 1.1 million MT. Korea's exports to the U.S. market declined in 2001 to 2.0 million tons. In part this was due to earlier U.S. trade actions and in part because a fire substantially reduced production in 2001 at a California cold-rolling mill, jointly owned by U.S. Steel and Korea's Pohang Iron & Steel (POSCO), which imports a substantial amount of Korean flat-rolled steel as feedstock.[26] Imports from Japan declined only marginally in 2001, but fell substantially from Taiwan – by more than half to about 500,000 MT.

Current and former centrally planned economies were strongly represented by **Ukraine**, **Russia** and **China**, each with around 1.3-1.4 million MT of exports to the United States in 2000; Russia's exports bucked the general downward trend and increased slightly in 2001, while imports from China and the Ukraine fell sharply. U.S. imports from Russia are governed by a suspension agreement, negotiated under the Clinton Administration as a resolution to an antidumping case. In Russia, Ukraine, and perhaps other former Soviet republics such as Moldova, the collapse of the Soviet Union has left major domestic industries without big government-financed projects that provided major markets for their steel. So now they look to the global market, including the United States.[27] But U.S. steel imports from the Ukraine in 2001 fell from more than 1.4 million MT to just 400,000 MT. Similarly, imports from China fell from 1.3 million MT to 700,000 MT.

U.S. imports from many other sources fell either marginally or substantially. Imports from **India** dropped sharply from nearly 1 million MT in 2000 to only about 200,000 MT in 2001. **South Africa** and **Australia** saw smaller declines, but, possibly assisted by a falling currency exchange rate, exports from **Turkey** to the United States increased 41% to almost 900,000 MT in 2001. This long list of countries still leaves out many other suppliers, most of which fully or partially qualify for the developing-country exemption to the Bush Section 201 remedy tariffs (to be discussed more fully below). And countries not covered by blanket national exemptions are lobbying for specific product exclusions or quotas, such as the quotas covering 1 million MT of imports of specific products that have already been granted to Australia and Korea.

There are many reasons for the attractiveness of the U.S. market for international steel producers. In a period of slow global growth and a strong dollar, many analysts believe, the U.S. market has become a safety valve for a systemic overcapacity that is distinctive for this industry. Gary Hufbauer and Ben Goodrich of the Institute for International Economics note that integrated steel mills have high fixed costs, so that "it makes sense for struggling steel firms to continue running their

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[25]See the report on USTR Robert Zoellick's trip to Brazil the week after the Bush 201 decision was announced in *New York Times*, March 14, 2002.

[26]*AMM*, March 19, 2002.

[27]See, for example, Section 3.1 of *Global Steel Trade*.

plants so long as the marginal revenues from extra production at least cover variable costs...economic logic differs somewhat for minimills...but while [they] account for a big share of U.S. steel production...their share of global production is much smaller. The world steel industry is still characterized by integrated steel producers and their overcapacity problems."[28]

Using data from the International Iron and Steel Institute and the Clinton Administration report, *Global Steel Trade*, Hufbauer and Goodrich calculated that global overcapacity at the height of the 1998 steel import surge was 275 million MT, out of total world production of 776 million MT.[29] Using 1999 OECD figures, the Canadian Steel Producers Association reported that the U.S. steel industry was the only one whose production level was substantially below domestic consumption (about 15%). The Canadian steel industry's production was about equal to consumption, and only the U.S. and Canada were major net steel importers. Using this production/consumption ratio, the Canadian producers reckoned that the EU overcapacity level was about 13%, Korea and Japan, 30-40%, Mexico 66% and Russia 191%.[30] Clearly, any plan to address steel trade issues would have major diplomatic implications. But U.S. steelmakers have cited job losses, past industry closures and capacity levels below current consumption to argue that they should not be required to participate in global capacity downsizing.[31] On the other hand, the European Commission has also argued that its producers have restructured, eliminated jobs, reduced capacity and seen a net steel trade surplus turn into a deficit. They say that the U.S. industry should get its own domestic house in order before seeking further trade remedies.[32] The further reaction of foreign governments to the Section 201 measures adopted by President Bush will be reviewed more fully after the analysis of that decision in a later section of the report.

The Legacy Cost Issue

"Legacy costs," and how they are to be met in any restructuring of the U.S. steel industry to meet international competition, have colored the political debates over steel issues. Legacy costs may be defined as pension and health care benefit provisions of steel worker contracts, which provide benefits beyond those that are available through public entitlements and that are funded by earnings of steel companies. These benefits were negotiated, especially at unionized integrated steel companies, to encourage workers to accept rationalization and productivity improvements that were deemed necessary to keep these companies competitive. Now many of these companies are in bankruptcy and some are facing possible liquidation, leaving retirees facing loss of benefits. Acquiring companies may be

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[28]Hufbauer and Goodrich, *Steel: Big Problems*, p. 3.

[29]*Ibid*.

[30]Canadian Steel Producers Association, "Addressing World Steel Overcapacity" (May 1, 2001), reproduced in *Inside U.S. Trade*, May 11, 2001.

[31]*AMM*, July 20, 2001.

[32]Letter of EU Ambassador Günter Burghardt to USTR Robert Zoellick, May 3, 2001(reproduced in *Inside U.S. Trade*, May 11, 2001), and European Commission press release, June 5, 2001.

interested in maintaining existing operations on an ongoing basis, but would have no interest in supporting large numbers of retirees. A number of legislative proposals have been made to address this issue; a major question is whether responsibility for benefits deals negotiated by private parties should be transferred to the U.S. government.

The United Steelworkers union (USWA) calculated in 1999 that there was a total of $10.6 billion in unfunded post-retirement health insurance obligations. The four largest companies with unfunded retiree health insurance plans, all large integrated producers, were U.S. Steel, Bethlehem Steel, LTV Steel, and AK Steel, which together accounted for 63% of total unfunded benefits.[33] Today, two of these companies are in bankruptcy, and one is in liquidation. For the major integrated producers, the USWA reported in May 2001 that total retiree health care and pension benefit costs amount to $65 per ton ($50 for pension benefits and $15 for health care benefits), or 14% of the average weighted price of a ton of steel.[34] This amounted to an estimated $965 million in annual health care benefits to approximately 400,000 retired employees and their families. USWA President Leo Gerard raised the estimated number of affected retirees to 600,000 in a letter to Members of Congress dated January 15, 2002, and another USWA source estimated that the total liability would be more than $13 billion in December 2001.[35]

Under U.S. law, retirees and active employees of a company providing health care could lose all coverage if the employer ends the plan upon a liquidation under Chapter 7 of the bankruptcy law. Even if a plan is continued through a bankruptcy reorganization, retiree health coverage may be subject to modification or termination. If the company maintains a health care plan for active employees, retirees may be able to participate if they elect to continue coverage at their own expense, under rules established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (so-called "COBRA continuation").[36] For example, the health care coverage of LTV's retirees ended on March 31, 2002, when a successor trust set up last year during LTV's bankruptcy ran out of money.[37] Workers still with LTV lost their health care benefits, when the plan was terminated following liquidation proceedings.

Retirement pensions are protected under federal law. For example again, the LTV pension plans have been taken over as of March 31 by the Pension Benefit Guaranty Corporation (PBGC). This move has protected the pensions of 82,000 LTV workers, retirees and dependents, insofar as they are eligible under PBGC rules.

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[33]USWA. *Domestic Steelmakers, Retiree Health Insurance Costs, 1999.* (Table prepared by USWA).

[34]USWA. *The Crisis in American Steel*. May 22, 2001. Major integrated steelmakers are U. S. Steel, Bethlehem Steel, LTV Steel, AK Steel, National Steel, Ispat Inland and Wheeling-Pittsburgh.

[35]This data is quoted in a *New York Times* article of December 5, 2001.

[36]Health care and pension benefits for employees and retirees of a company that has entered Chapter 7 or Chapter 11 bankruptcy proceedings are discussed in CRS Report RL30641, *Employment Benefits in Bankruptcy*; see especially pp. 6-7 on retiree health care issues.

[37]*AMM*, February 26, 2002.

PBGC estimates that about half the total $4.4 billion LTV pension liability is unfunded, so the net cost to PBGC will be about $2.2 billion. PBGC reported a surplus of $7.7 billion as of 2001, despite an annual loss of $2 billion. The LTV pension funds takeover, the largest ever accomplished by PBGC, should thus not leave the organization in the red, though it may questionable how many more such transactions the fund can sustain.[38]

The USWA argues that the major integrated companies are at a competitive disadvantage against domestic companies that do not face legacy costs or foreign manufacturers whose governments already provide health care to steelworkers through national health care plans. Domestic companies that operate minimills, such as Nucor, have a younger work force, few retirees, and no unfunded post-retirement obligations.[39] With President Bush having made the decision to apply a range of tariff remedies under the Section 201 steel case, attention in the industry and Congress may shift from trade policy to legacy costs. This is not only because of the impact of bankruptcies on health care and pension coverage of affected workers, but also because restructuring of the industry, especially the integrated mills, may not be possible without resolving this question. As members of the Senate Steel Caucus wrote President Bush on February 8, 2002:

> The single, greatest barrier to market-based restructuring is the existence of unsustainable retiree health and pension-related legacy costs. Unfunded steel industry pension liabilities to the Pension Benefit Guaranty Corporation already exceed $7 billion, and these liabilities, combined with depressed market conditions, have made restructuring within the industry via acquisition nearly impossible.[40]

The Steel Industry Consolidation Proposal

On December 4, 2001, the largest integrated American steelmaker made an announcement that could signal a major change in the structure of the industry. U.S. Steel confirmed that "It is developing a comprehensive plan for significant consolidation in the domestic integrated steel industry." The plan involved three "key elements:"

> First, it requires the implementation of President Bush's [steel]...program...[especially] a strong remedy under Section 201 of the Trade Act of 1974. Second, it calls for the creation of a government-sponsored program that would provide relief from the industry's retiree legacy cost burden...thereby removing the most significant barrier to consolidation of a

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[38]Pension Benefit Guaranty Corporation. Press releases, "PBGC Protects Benefits of 82,000 LTV Workers in Largest-Ever Federal Pension Takeover," (Mar. 29, 2002), and "PBGC Records $7.7 Billion Surplus Despite Sharply Higher Claims in 2001," (Apr. 8, 2002).

[39]USWA. *Domestic Steelmakers: Retiree Health Care Legacy Costs*. no date.

[40]Letter of Senate Steel Caucus to President George W. Bush, February 8, 2002.

> highly fragmented industry. Third, it requires a progressive new labor agreement that would provide for meaningful reductions in operating costs.[41]

The plan essentially calls for consolidation of much of the U.S. integrated production under U.S. Steel. Companies confirmed to have participated in the discussions include Bethlehem Steel (which announced the plan jointly with U.S. Steel), Wheeling Pittsburgh, and National Steel, a U.S. subsidiary of Japan's NKK steel company. Each of these companies is among the top ten integrated steel companies in the United States.

The U.S. Steel-Bethlehem move was only a belated reflection of what is happening globally. There has been a wave of consolidations in Europe, capped recently by the plans of France's major steelmaker, Usinor, to merge with the Luxembourg steelmaker, Arbed, and its Spanish affiliate, Aceralia, to create what is now the world's biggest steelmaker.[42] Also, Japan's five big steelmakers, also among the world's biggest, are involved in talks to create two new alliances of two companies each.[43] In the U.S. Steel statement, president and CEO Thomas Usher noted such consolidations in the international industry, though he insisted that his plan was far from a done deal. "We are willing to participate in such a process, but only to the extent that it is beneficial to U.S. Steel's customers, shareholders, creditors and employees."[44]

The U.S. Steel plan was made public reportedly after extensive discussions with representatives of the Bush Administration, especially U.S. Trade Representative Robert Zoellick and Secretary of Commerce Don Evans, and the Congressional Steel Caucus.[45] Proponents view government aid, through high temporary tariffs under the Section 201 initiative and through legacy cost assistance, as an indispensable component of any industry consolidation program.

USWA president Leo Gerard indicated labor's support for the plan and government aid in covering retiree and health care benefits. "If steelmakers were to

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[41] USX Corp. "U.S. Steel Developing Plan for Significant Consolidation in Domestic Integrated Steel Industry," press release (December 4, 2001). USX was the holding company parent of U.S. Steel Corporation before December 31, 2001. At the end of the year, the steelmaking operations of USX became the current U.S. Steel through a tax-free spin-off from USX, whose other operations have become the totally separate Marathon Oil Corporation.

[42] The new company is called "Arcelor." *AMM*, December 13, 2001.

[43] *AMM*, December 5, 2001 and January 3, 2002; *Financial Times*, Dec. 23, 2001 and April 8, 2002. Additionally, a *Financial Times* article (Jan. 10, 2002) on an alliance between Japan's Sumitomo Metals and the Anglo-Dutch steel firm Corus notes an increasing array of international alliances within the industry. An April 8, 2002, article in the same newspaper describes a new technology alliance between NKK and Kawasaki Steel of Japan with Germany's largest steelmaker, ThyssenKrupp.

[44] USX press release of December 4, 2001.

[45] *DER*, "U.S. Steel Companies Eye Consolidation for Industry, Government Aid for Retirees" (Dec. 5, 2001); *New York Times*, Dec. 5, 2001; *Inside U.S. Trade*, "Steel Companies Begin Process to Explore Consolidation, Aided by U.S." (Dec. 7, 2001).

liquidate and 600,000 retirees were to lose their benefits – bring that to 1 million family members in key industrial states – I'd make sure all those retirees know who in Washington abandoned them." And Bethlehem Steel CEO Robert S. Miller argued that covering legacy costs to help save a consolidated industry might be cost-effective. "The government would be on the hook," for $2 billion in pension guarantees in Bethlehem's case, Miller asserted. "You multiply that across the industry, and it would exceed [government's paying legacy health care costs]," he calculated.[46] Miller was apparently implying that in the case of his company, and similar companies now operating in bankruptcy, it may actually be cheaper for the government to bear existing legacy costs, rather than to allow the companies to liquidate and have the government become responsible through PBGC for employee pensions.[47]

At a Senate hearing on March 14, 2002, Miller amplified on this calculation. In addition to PBGC costs, he estimated that Bethlehem is currently responsible for $3 billion in health care liabilities, some share of which would be picked up by the public sector should Bethlehem liquidate.[48] The Senate Steel Caucus letter of February 8, quoted above, estimates that the total direct and indirect costs to government of "continued steel company failure," including lost state and local tax revenues, food stamps for unemployed workers and impact on secondary businesses, as well as the direct legacy cost issues, could be as high as $20 billion.[49]

The original industry consolidation plan was vigorously criticized by the steel minimills, which are not in general troubled by the legacy cost problem. The president of the Steel Manufacturers Association (representing minimills), Thomas Danjczek, called the government aid proposal a "bailout."[50] Nor has the idea of government financial support for industry consolidation been enthusiastically received outside the steel industry.[51]

To address the perception of a division in steel's ranks, the CEOs of U.S. Steel and Nucor, together with other steel executives, announced on January 15, 2002, a "common action plan." They agreed on two essential steps:

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[46]Gerard and Miller are quoted in *New York Times*, December 5, 2001.

[47]Employee pensions are paid into a separate trust fund that is guaranteed under the Employee Retirement Income Security Act (ERISA); see CRS Report RL30641.

[48]Testimony at Senate Health, Education, Labor and Pension Committee hearing, March 14, 2002.

[49]Letter of 13 Senators to President Bush, Feb. 8, 2002.

[50]Quoted in *New York Times*, Dec. 11, 2001. Nucor Corp. issued its own counter statement attacking the government assistance concept in the U.S. Steel plan, reproduced in *Inside U.S. Trade*, Dec. 7, 2001. But some minimill executives, including the head of financially troubled Birmingham Steel Corp., were quoted in a more positive vein in *AMM*, December 6, 2001.

[51]Critical editorials and articles appeared in the *Chicago Tribune*, Dec. 5, 2001; *Washington Post*, Dec. 8, 2001; *New York Times*, Dec. 11, 2001; and, *Wall St. Journal*, editorial comment and "Capital" front-page column, December 6, 2001.

- "...A strong and comprehensive remedy under Section 201..." This would include a "minimum" 40% tariff for four years covering "the full range of products where injury has been found by the ITC." (Both Nucor and U.S. Steel have subsequently expressed support for the 30% remedy tariffs assigned to high-volume product imports in President Bush's Section 201 case decision.)

- "...Removal of the principal barrier to consolidation – employee-related obligations that certain steelmakers have accrued through prior restructuring actions as well as those that will result from future rationalization activities." However, this did not mean "direct government payments to any steel company." Rather, the steel company CEOs suggested that the government should bear, "with existing government programs...to the maximum extent possible," the costs of rationalization by assuming for displaced workers of consolidated companies "the same obligations that would become [government's] responsibility via the Chapter 7 liquidation process."[52]

This "common action plan" was not directly translated into a legislative proposal, nor did other industry stakeholders respond.[53] Legislation would be necessary if the federal government were to assume responsibility for any additional payments or benefits that steel company employees and retirees receive beyond those to which they are entitled under existing law. Thus, in April 2002 nine Senators co-sponsored S. 2189, the Steel Industry Consolidation and Retiree Benefits Act, after reported consultations with large integrated steel companies and the USWA. This initiative was taken as an amendment to add steel legacy cost relief to the Senate Energy bill failed on the floor.[54] Shortly thereafter, two similar bills were introduced in the House. These legislative developments will be analyzed in detail in the next section of the report.

The Administration has so far provided no specific guarantee of government support beyond trade policy. At his press briefing on the presidential Section 201 decision, U.S. Trade Representative Robert Zoellick deflected a question on legacy cost relief by saying, "...In the meeting that the President had with members of the steel caucus last week, Democrats and Republicans, everyone who spoke about this topic said, Mr. President you should focus on the safeguard action and let Congress deal with this question of legacy costs, recognizing that there are a variety of views." Zoellick further indicated that, "The steel industry was somewhat divided...Some of the large, integrated producers want the government to pick up the $13 billion. The minimills, who have had a different set of labor contracts, didn't want that."[55]

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[52]Identical press releases of Nucor and U.S. Steel, January 15, 2002; see also *DER*, "Steel Industry Heads Announce Plan for Steel Industry Recovery," January 16, 2002.

[53]See *Inside U.S. Trade*, "Steel Company Agreement Omits Specific Solution for Legacy Costs" (January 25, 2002).

[54]*AMM*, April 19, 2002; *DER*, "Senate Rejects GOP Effort to Open Arctic Refuge to Oil, Gas Exploration," (Apr. 19, 2002); *Washington Post*, April 19, 2002.

[55]Press Briefing by U.S. Trade Representative Robert Zoellick (March 5, 2002), (continued...)

Indeed, a formal board of directors' statement of the minimills' trade group stressed the limited nature of their support of government assistance for legacy costs and the group's head has directly criticized S. 2189.[56]

Without any government action on legacy cost proposals, the steel industry may restructure itself, coping with legacy costs as best it can, possibly through bankruptcy reorganizations. Since the initial announcement of the U.S. Steel consolidation plan, National Steel has joined Bethlehem and Wheeling-Pitt in chapter 11 bankruptcy.[57] Meanwhile Bethlehem has indicated that the consolidation plan is developing too slowly in resolving legacy costs to be of use in its bankruptcy reorganization. It is pursuing other joint-venture opportunities.[58]

Relief Under Section 201 of U.S. Trade Law

Procedures in the Section 201 Trade Case

On June 5, 2001, responding to many requests from Congress, union representatives and steel companies, President Bush announced that his Administration would call upon the ITC to begin an investigation on steel under Section 201 of U.S. trade law. The focus of this investigation was much broader than the one undertaken by the Clinton Administration in 1999-2000 (and which is summarized below, in the section on other measures to aid the steel industry). The President also announced that he would seek multilateral negotiations with U.S. trading partners on fundamental issues of overcapacity and subsidies.[59]

Section 201 relief, often referred to as "safeguard" or "escape clause" relief, is defined in Sections 201-204 of the Trade Act of 1974, as amended (19 U.S.C. 2251-2254). In conformity with WTO rules, safeguard relief provides for temporary duties, quotas, or other restrictions on imports that may be traded fairly, but that enter in such quantities as to cause or threaten to cause serious injury to a domestic industry. The relief is intended to give the domestic industry an opportunity to adjust to the new competition and remain competitive. Within six months, the ITC must conduct an investigation, determine if relief is warranted, and, if so, recommend appropriate remedial action from a specified range of options. The President then decides whether to implement the recommended measure, apply an alternative measure, or take no action at all. If the President takes no action or action different from the ITC recommendation, the ITC's recommendations may still go into effect,

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[55](...continued)
http://www.whitehouse.gov/news/releases/2002/03/20020305-13.

[56]Steel Manufacturers Association. "Steel Industry Statement on Proposed Sections 201/203 Trade Remedy," (February 8, 2002), p. 2; *AMM*, April 22, 2002.

[57]*Financial Times*, March 6, 2002; *AMM*, March 7, 2002.

[58]*AMM*, March 6 and 27, 2002.

[59]President George W. Bush. *Statement by the President Regarding a Multilateral Initiative on Steel*. (June 5, 2001), http://www.whitehousereleases/2001/0605-4.html.

if Congress enacts a joint resolution of disapproval of the President's decision within 90 days of notification of that decision.[60]

- On June 22, 2001, USTR Zoellick forwarded the formal Bush Administration Section 201 request regarding the broader steel case to the ITC. More than 500 steel mill products were covered in the request, including carbon and alloy flat, long, and pipe and tube products (wire rod and line pipe products are in the separate 201 case mentioned above), as well as some stainless and tool steel products. Most semi-finished steel products were included, but not the upstream inputs (iron ore, pig iron and coke), which some Members of Congress had urged be included.[61] Under Section 201, the ITC now had six months to complete its investigations and recommend remedies, if any, to the Administration.

- Senator Jay Rockefeller separately pursued a Senate Finance Committee resolution that would independently call for an ITC investigation, in addition to the presidential action. Sen. Rockefeller had considered including upstream inputs in a committee-sponsored request to the ITC, but the final committee resolution endorsed the Administration action and product list, as well as the effort to seek a multilateral agreement. Accordingly, the ITC consolidated the Section 201 case requests from the Administration and Congress.[62]

- The ITC held a series of hearings on the issue of injury to the steel industry from imports starting on September 17, 2001. The ITC staff had grouped the tariff headings forwarded by USTR into 33 product categories, under four broad groupings. For each category, the ITC had to determine whether imports for the period 1996-2001 constituted a "substantial cause of injury or threat of injury" to domestic producers (*i.e.*, were "important and not less than any other cause").[63] On October 22, 2001, a majority of the ITC found that imports were a "substantial" cause of injury in 16 of the 33 product categories; the remaining 17 categories were dismissed from further consideration under Section 201.

- The ITC conducted hearings on trade remedies for 16 categories of products that represent the vast majority of U.S. steel imports in November, 2001. The ITC voted on remedies on December 7, 2001, and forwarded the results of the

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[60]CRS Trade Briefing Book , *Section 201 of the Trade Act of 1974* by Jeanne J. Grimmett (http://www.congress.gov/brbk/html/ebtra68.html)

[61]Letter from U.S. Trade Representative Robert B. Zoellick to Chairman Stephen Koplan, U.S. International Trade Commission (June 22, 2001) with attachments. See also *Inside U.S. Trade*, "Steel Section 201 Request to Include Semi-Finished Steel," June 22, 2001; *AMM*, June 26, 2001; and, *DER*, "USTR Zoellick Asks ITC to Launch Probe on Steel Imports' Impact on U.S. Industry," June 26, 2001.

[62] *AMM*, July 18 and 31, 2001; the Finance Committee resolution was forwarded by letter to the chairman of the ITC on July 26, 2001. U.S. International Trade Commission. Revised announcement on consolidation of Senate Finance Committee request with USTR request of June 22, 2001, for a Section 201 investigation on steel, August 16, 2001.

[63]Quoted phrases from 19 USC Section 2252 (b)(1)(B).

vote and its recommendations to the White House on December 19. The ITC remedy recommendations were not unanimous. Two commissioners recommended four-year tariffs starting at 40% for most products by volume, three commissioners recommended tariffs starting at half that level, and one commissioner generally recommended quotas instead of tariffs.

- Acting within the period prescribed by law, President Bush announced on March 5, 2002, trade remedies for all products on which the ITC had found substantial injury except two specialty categories (tool steel and stainless steel flanges and fittings). All remedies will be of three years duration and were imposed as of March 20, 2002. The President will also impose a general import licensing and monitoring system. Imports from NAFTA members Canada and Mexico, as well as most imports from developing countries, are exempted from the remedy tariffs. The Administration is also reviewing more than 1,000 requests for exclusion of other specific imports from the remedy measures, on grounds that they are not available from U.S. producers.

Reaction to the Administration decision to proceed with a Section 201 case was predictably varied. USWA president Gerard called the Administration's 201 case "reasonably comprehensive," though he expressed disappointment regarding exclusion of the upstream inputs.[64] The reaction of steel industry producer associations, including the American Iron and Steel Institute (AISI), and the Steel Manufacturers Association (SMA), has been almost uniformly favorable to the Section 201 case.[65] The American Institute for International Steel, representing importers, indicated that it would oppose "protectionist" actions or subsidization of the domestic industry, but supported the President's intention to address global overcapacity and foreign governments' subsidization of the steel industry.[66] The International Iron and Steel Institute (IISI), the Brussels-based international industry organization, called "for a rapid and positive response of the major steel-producing nations" to the Bush proposal on multilateral negotiations.[67]

The Consuming Industries Trade Action Coalition (CITAC) responded negatively to the 201 case and pointed out that its earlier study had found that steel import quotas could cost "as much as $2.34 billion annually or up to $565,000 per steel job."[68] Hufbauer and Goodrich calculated the total cost of quota protection at $3.5 billion or $363,000 per job, and asserted that most of the benefits would go to creditors, investors and competitors, not directly to steelworkers.[69] Jon Jenson, President of CITAC, was quoted as saying that the problem of legacy costs was due to bad decisions made by the heads of integrated steel mills. "They made promises they can't keep. Why should the taxpayers and the steel users be made to feel guilty

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[64] *DER*, *loc. cit.*

[65]*AMM*, June 7, 2001.

[66]*Ibid.*

[67]IISI press release, July 18, 2001.

[68]CITAC press release, June 5, 2001.

[69]Hufbauer and Goodrich, *Steel: Big Problems*, pp. 8-10.

over promises they can't keep?" Import remedies, he claimed, would add 15 to 20% to steel prices.[70]

ITC Decision on Injury

The ITC in September and early October, 2001, conducted its planned program of hearings on the injury phase of the Section 201 case. The structure of the case and hearings were themselves an issue. These were based on an extensive prehearing report on the industry by the ITC staff.[71] The report classified the more than 500 subject products proposed by the Administration into 33 different categories, grouped under four general product headings:

- Carbon and alloy flat products;
- Carbon and alloy long products;
- Carbon and alloy tubular products;
- Stainless and tool steel products.

The domestic industry petitioners were especially concerned that the ITC's approach could lead to a hit-and-miss or checkerboard pattern of trade relief across the product categories. Merchant suppliers of imported steel might then shift their focus to those product lines that had escaped trade relief action. Advocates for large integrated steel mill companies showed how semi-finished slabs were subsequently finished into hot-rolled steel and plate, and in the former case, then into cold-rolled steel, corrosion-resistant steel or tin mill products. But semi-finished slabs, a separate product under investigation, comprise 75-85% of the cost of hot rolled steel, and 65-70% of the cost of downstream cold-rolled products. It was stated that domestic integrated mills and minimills are both "integrated" for the purposes of this case, because both basic oxygen and electric arc furnaces produce slab products for subsequent industry processing.[72]

Respondents rejoined that hot-rolled and slab imports were critical inputs for their businesses to remain competitive. They had developed essentially as finishing mills using expensive and sophisticated technology to manufacture and shape a wide range of cold-rolled or formed downstream products. They provided evidence that not only were their mills major investors and employers in their own right, but that

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[70]*AMM*, August 27, 2001. The industry response is that the benefits commitments were made in good faith, but no one anticipated the surge of cheap imported steel into the U.S. market in the late 1990s because of global overcapacity (see above, pp. 5-6 and 13-14); for the union position, see below, in the discussion on H.R. 808.

[71]U.S. International Trade Commission. *Steel: Prehearing Report to the Commission on Investigation No. TA-201-73* (September 4, 2001). This information has been repackaged and updated based on evidence presented at the hearings in U.S. International Trade Commission. *Steel (Investigation No. TA-201-73)*, Vols. II-III (Publ. 3479, Dec., 2001).

[72]Alan Wm. Wolff, Testimony Before ITC Steel Investigation no. TA-201-73 (September 19, 2001). Nucor CEO Dan DiMicco discussed the different processes, but also noted that steel rolled at minimills from "thin slabs" competed directly against steel rolled from imported slabs and that all long-rolled products should be considered as "like" products under the Section 201 statute; ITC Steel hearing testimony of September 19.

the jobs in steel consuming industries in the United States were far more numerous and more widely dispersed than U.S. steelmaking jobs.[73] Some witnesses also testified that for their businesses steel of sufficient quality or quantity is not available in the domestic market, yet the subject products were included in the investigation.[74]

The major subject of the hearings was whether imports were a "substantial" cause of injury, as the ITC had to find in order to propose relief. For example, representatives of domestic flat and long producers relied heavily on an econometric analysis, which showed imports as the chief cause of declining prices for a wide range of products. With respect to the recent import decline, the analysis stated that the entire five-year period of investigation is the proper focus, as price impacts will have a lag effect for 12-18 months after import surges.[75] Thomas Usher, president and CEO of U.S. Steel, was asked why competition from Nucor, also a petitioner, was any different from competition from overseas. Usher stated that when Nucor won an order with a lower price, he could make judgements based on knowledge of its U.S. capacity and whether it could subsequently compete at that level on future bids. When lower price bids came from many foreign mills, he had no ability to make such judgements, since the status of their capacity, the conditions of competition and government support in their domestic market, were frequently unknown or unknowable for him.[76]

In presenting their case, respondents argued that their approach represented a move to reorganize the U.S. industry into its most profitable segments, as opposed to the investment mistakes made by domestic producers who expanded capacity despite declining prices and increasing competition. Respondents propounded a new model of the U.S. steel industry, based on segmented producers, integrating inputs from various market sources, including imports, while applying new technologies in specialized market niches. High levels of debt and over-leveraging to cover expansion and high costs (including legacy costs) were represented as the most substantial causes of the financial difficulties of the existing domestic industry. [77]

Finally, the injury hearings were especially notable for the injection of a strong sense of the political impact of this case. The first witness at the first hearing, testifying in support of relief, was Senator Robert Byrd of West Virginia. He was

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[73]See especially testimony of Lourenço Gonçalves, California Steel Industries, ITC Steel hearings (September 19, 2001), and table prepared by CITAC on relative employment levels of steel and steel consuming industries.

[74]Testimony of W. Fergus Porter of Connecticut Steel (a steel "re-roller"), ITC Steel hearing (September 19, 2001) and William C. Lane, Caterpillar Inc., ITC Steel hearing (September 24, 2001).

[75]Testimony of Prof. Jerry Hausman, ITC Steel hearing (September 19, 2001).

[76]Answer to a question from ITC commissioner Jennifer Hillman, ITC Steel hearing on injury (September 19, 2001).

[77]See esp. testimony of Thomas J. Prusa, ITC Steel hearings (September 19, 2001). Professors Hausman and Prusa sharply criticized each other's analyses and rejected their fundamental premises. Witness Julie C. Mendoza on the same date made the most systematic critique of the financial management of the domestic industry.

followed through the course of the hearings by 40 other political leaders, including members of both parties, both Houses of Congress, and several Governors. All testified in support of relief. In the subsequent hearings on remedies, this political perspective was balanced somewhat, as Senator Chuck Hagel of Nebraska and Representative Jim Kolbe of Arizona provided testimony, not against relief per se, but reminding the ITC of U.S. interests in maintaining adherence to the WTO international trade regime and the interests of U.S. consumers.[78] Similarly, Representatives Isakson and Deal of Georgia testified on behalf of a corporate constituent whose business could be endangered, they said, by an effective cut-off of steel imports. In view of the September 11 terrorist attacks on New York and Washington, DC, many political representatives frequently included in their remarks references to the importance of a domestic steel industry to U.S. national security. President Bush's comments on steel and national security, made at a U.S. Steel company picnic in August 2001, were widely referenced.[79]

On October 22, 2001, the ITC announced its decision on injury. A majority of the ITC determined that in 12 cases imports were a substantial cause of, or threatened to cause, injury to the domestic industry. This determination included imports of semifinished steel slabs and nearly all flat products. In four other cases, the vote was tied, meaning that the President had the option of granting relief for these products as well. These injury findings covered the majority of U.S. steel imports. In 17 product categories, the ITC found no substantial injury from imports. These products were dismissed from further consideration. Under terms of the North American Free Trade Agreement, the ITC rules separately on NAFTA imports, when there is a general finding of injury. In seven cases, a majority of the ITC found injury from Mexican imports, and in five cases, it found injury from Canadian imports, with a tie vote on injury from Canada in a sixth product group. **Table 2** summarizes the ITC's injury findings. Products for which insufficient injury was found are shaded in the table and were excluded from the remedy phase of the investigation and any further action by President Bush under Section 201.

[78]See, for example, Rep. Kolbe's statement at www.house.gov/kolbe.

[79]See Leo W. Gerard, Statement Before ITC Hearing on Steel, Investigation no. TA-201-73 (September 17, 2002), p. 4.

Table 2. ITC Injury Determination – Global Steel Case

(Investigation No. TA 201-73)

Product Classification	Injury	NAFTA Imports:	
		Canada	Mexico
Carbon and Alloy Flat Products			
1. Semifinished Slabs	**Yes**	No	**Yes**
2. Plate (Cut-to-Length and Clad)	**Yes**	No	**Yes**
3. Hot-Rolled Sheet and Strip (incl. Coils)	**Yes**	No	**Yes**
4. Cold-Rolled Sheet and Strip (exc. GOES)	**Yes**	No	**Yes**
5. Grain-Oriented Electrical Steel (GOES)	No		
6. Corrosion-Resistant and Other Coated Sheet and Strip	**Yes**	No	**Yes**
7. Tin Mill Products	**(Tie)**	No	No
Carbon and Alloy Long Products			
8. Ingots, Blooms and Billets	No		
9. Hot-Rolled Bar and Light Shapes	**Yes**	**Yes**	No
10. Cold-Finished Bar	**Yes**	**Yes**	No
11. Rebar	**Yes**	No	No
12. Rails and Railway Products	No		
13. Wire Products	No		
14. Rope, Strand, Cable and Cordage	No		
15. Nails, Staples and Woven Cloth	No		
16. Heavy Structural Plate and Sheet Piling	No		
17. Fabricated Structural Units	No		

Table 2. ITC Injury Determination – Global Steel Case
(Continued)

Product Classification	Injury	NAFTA Imports:	
		Canada	Mexico
Carbon and Alloy Tubular Products			
18. Seamless Tubular Products (non-OCTG)	No		
19. Seamless Oil Country Tubular Goods (OCTG)	No		
20. Welded Tubular Products	**Yes**	**(Tie)**	No
21. Welded OCTG Products	No		
22. Fittings and Flanges	**Yes**	**Yes**	**Yes**
Stainless and Tool Steel Products			
23. Stainless Slabs, Blooms, Billets and Ingots	No		
24. Cut-to-Length Plate	No		
25. Stainless Steel Bar and Light Shapes	**Yes**	**Yes**	No
26. Stainless Steel Rod	**Yes**	No	No
27. Tool Steel	**(Tie)**	No	No
28. Stainless Steel Wire	**(Tie)**	No	No
29. Stainless Steel Cloth	No		
30. Stainless Steel Strand, Rope, Cables and Cordage	No		
31. Stainless Steel Seamless Tubular Products	No		
32. Stainless Steel Welded Tubular Products	No		
33. Stainless Steel Flanges and Fittings	**(Tie)**	**Yes**	**Yes**

Source: U.S. International Trade Commission. Press release 01-124, "ITC Details Its Determinations Concerning Impact of Imports of Steel on U.S. Industry" (October 23, 2001).

ITC Recommendations on Trade Remedies

The ITC considered remedies in hearings held November 6-9, 2001. All major groups of petitioners supported raising tariffs in the high-volume flat and long product categories to or near the maximum 50% level allowed under U.S. trade law. USWA president Gerard also asked for import quotas. The major integrated producers sought that the proceeds be returned to the industry to cover retiree legacy costs.[80] Some domestic stainless and tool steel petitioners requested import quotas, rather than high protective tariffs. In general, the respondents favored reimposition of quotas, as in the 1980s, instead of high tariff levels.

After hearing from petitioners and respondents, the ITC voted on remedies on December 7, 2001, and forwarded its recommendations to President Bush on December 19. The remedy recommendations were substantially differentiated into three groups among the six commissioners.[81] With respect to the high-volume flat and long steel categories, two commissioners came closest to giving petitioners their request. They recommended four-year tariffs starting at 40% for such products. Three commissioners voted together for lesser four-year tariffs on flat and long products, starting at 20%. In addition, they recommended a tariff-rate quota (no additional remedy tariff) for the first 7.0 million tons of semi-finished slabs in the first year of relief, rising to 8.5 million tons in the fourth year. The three commissioners found that "commercial sales of domestically produced slabs have been extremely limited," and doubted whether domestic producers could adequately supply the U.S. market.[82] The sixth commissioner essentially abjured remedy tariffs altogether on flat and long products, and instead recommended import quotas across the board. On the lower volume, but higher cost, tubular, stainless and tool steel products, the recommendations were even more mixed, with the ITC offering lower levels of remedy tariff relief. In general, where Canada and Mexico were included in the injury findings, they were also included in the application of remedy tariffs.

The ITC's final decision and vote left no one satisfied.[83] As it was, in effect, advisory, it left President Bush much leeway in his decision on final relief. The three commissioners voting together for tariffs up to 20% represent in this case the formal ITC position, but two of the other three commissioners had voted for even higher tariff levels.[84]

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[80]Exhibits presented by the law firms of Dewey Ballantine and Skadden, Arps, Slate, Meagher & Flom.

[81]The following analysis is based on the table presented in U.S. International Trade Commission. *Steel* (Publ. 3479), volume I, pp. 19-22. The results are also summarized in a table in *AMM*, December 17, 2001.

[82]USITC. *Steel* (Publ. 3479), vol. I, pp. 364-366. Commissioners may have also been influenced by the actions of Geneva Steel, which was cited as a company that could supply domestic slabs, but then temporarily shut down while the ITC hearings were in progress.

[83]An *AMM* headline said, "One-hand Clapping Greets ITC Decision on '201' Case," December 11, 2001.

[84]On the definition of a "Commission position," see footnote 5 on page 2 of USITC, *Steel*
(continued...)

The Consuming Industries Trade Action Coalition (CITAC) left no doubt about its reaction to any proposed safeguard tariff hikes. In a new study released shortly after the ITC remedy vote, CITAC's experts calculated that the total costs to steel consumers would be in the range of $2-4 billion, depending on whether a low or high protective tariff was used. The CITAC analysis further estimated that to protect 4,000-8,000 steel jobs (depending on the tariff level), more than eight consuming industry jobs would be lost for each steel job saved.[85] The CITAC analysis is based on a 2000 data baseline, from which it calculates that imports would fall 19-36%, depending on the level of protection offered. But actual imports for 2001 had already fallen by approximately that amount, owing to the domestic U.S. industry recession.

The venue for such arguments shifted from the ITC's hearing room to the Administration's internal decision-making processes. During the week of January 7-11, 2002, the interagency Trade Policy Staff Committee (TPSC) hosted meetings at the Commerce Department with advocates and opponents of steel safeguard remedies, including product exclusions.[86] Members of Congress were actively involved, both inside and outside the Administration's formal decision process.[87]

Presidential Decision on Remedy Tariffs

On March 5, 2002, the White House announced the President's decision on trade remedy measures under the Section 201 process. The President adopted remedy tariffs at a high level for higher-volume flat and long products and semi-finished slabs, with a quota for slab imports with no remedy tariffs (in effect, a tariff-rate quota). Lower levels of relief were provided for some long products, notably rebar, and tubular and stainless products. No remedy relief at all was provided for two product categories included in the ITC injury findings. Relief was for three years, not four, possibly to minimize compensation claims under WTO rules. Canada, Mexico and other U.S. free-trade area partners (namely Israel and Jordan) were exempted from all remedy tariffs, and most imports from most developing countries were also exempted.

Tables 3A and **3B** respectively summarize the remedy relief by product categories and the country exemptions. Although the remedy tariffs went into effect

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[84](...continued)
(Publ. 3479).

[85]Joseph F. Francois and Laura M. Baughman, *Estimated Effects of Proposed Import Remedies for Steel* (Washington, DC, Dec. 19, 2001), especially Table 2. In a new report, Hufbauer and Goodrich reach similar conclusions, though their model projects that the higher tariffs proposed by Commissioners Devaney and Bragg actually have a lower net negative effect, because of the higher number of steel industry jobs saved. *Time for a Grand Bargain in Steel?* Institute for International Economics Policy Brief PB02-1 (Jan. 2002), pp. 7-8, especially Table 5.

[86]*AMM*, January 7 and 9, 2002.

[87]See, for example, Sen. Rockefeller's editorial article, "Supporting American Steel," *Washington Post*, Jan. 8, 2002; and a similar piece by Sen. Mikulski, "Steel's 40 Percent Solution," *New York Times*, March 2, 2002.

Table 3A. Section 201 Steel Remedy

PRODUCTS	REMEDY TARIFF RATES		
	Year 1	Year 2	Year 3
Flat products: Semi-finished Slab	5.4m. ton quota	5.9m. ton quota	6.4m. ton quota
	30% over quota	24% over quota	18% over quota
Finished Flat products: Plate, Hot-Rolled Sheet, Cold-Rolled Sheet, Coated Sheet	30%	24%	18%
Tin Mill products	30%	24%	18%
Hot-Rolled Bar	30%	24%	18%
Cold-Finished Bar	30%	24%	18%
Rebar	15%	12%	9%
Welded Tubular Products (Non-OCTG)	15%	12%	9%
Carbon and Alloy Flanges and Fittings	13%	10%	7%
Stainless Steel Bar	15%	12%	9%
Stainless Steel Rod	15%	12%	9%
Stainless Steel Wire	8%	7%	6%
Tool Steel **Stainless Steel Flanges**	No Remedy.		

Source: President of the United States. *Message to Congress* (House Doc. 107-185), March 6, 2002.

Table 3B. Section 201 Country Exemptions

Free Trade Area Partners	Canada	Mexico	Israel	Jordan
Developing Countries	Albania	Czech Republic	Kyrgyzstan	Rwanda
	Angola	Djibouti	Latvia	St. Kitts/Nevis
	Antigua	Dominica	Lesotho	St. Lucia
	Argentina	Dominican Rep.	Lithuania	St. Vincent
	Bahrain	Ecuador	Madagascar	Senegal
	Bangladesh	Egypt	Malawi	Sierra Leone
	Barbados	El Salvador	Mali	Slovakia
	Belize	Estonia	Mauritania	Solomon Is.
	Benin	Fiji	Mauritius	South Africa
	Bolivia	Gabon	Moldova	Sri Lanka
	Botswana	Gambia	Mongolia	Suriname
	Brazil	Georgia	Morocco	Swaziland
	Bulgaria	Ghana	Mozambique	Tanzania
	Burkina Faso	Grenada	Namibia	Thailand
	Burundi	Guatemala	Niger	Togo
	Cameroon	Guinea	Nigeria	Trinidad/T.
	Central African Republic	Guinea Bissau	Oman	Tunisia
	Chad	Guyana	Pakistan	Turkey
	Chile	Haiti	Panama	Uganda
	Colombia	Honduras	Papua New Guinea	Uruguay
	Congo (Brazzaville)	Hungary	Paraguay	Venezuela
	Congo (Kinshasa)	India	Peru	Zambia
	Costa Rica	Indonesia	Philippines	Zimbabwe
	Cote d'Ivoire	Jamaica	Poland	
	Croatia	Kenya	Romania	
<u>Except:</u>	Slabs, Flat products:	Rebar:	Welded Pipe:	Carbon Flanges:
Imported from	Brazil	Moldova Turkey Venezuela	Thailand	India Romania Thailand
Source: As for Table 3A.				

on March 20, 2002, the Administration allowed itself four additional months, to July 3, 2002, to complete review of requests for further individual product exclusions.[88]

The structure of the presidential decision focuses on safeguard tariffs for lower value products, which are higher up the chain of product development. Such products generally receive the highest tariff protective rate of 30% in the first year. By U.S. law, as well as the terms of the safeguard agreement, protective measures must be progressively relaxed during the period of application. Hence the remedy tariff rates decline in the second and third years. The top level rates decline rather sharply, however, by 6 percentage points per year, which is probably an indication that the Administration wants and expects serious efforts at industry restructuring, rather than business-as-usual behind the remedy tariff wall.

There are three classes of exemptions and exclusions of imports from the remedy tariffs:

- ***Imports from the North American Free Trade Area and other FTAs.*** *Canada* and *Mexico* are significant exporters of steel products to the U.S. market, but their products are excluded from Section 201 remedy tariffs (as are any products from the other two U.S. free-trade partners, *Israel* and *Jordan*). Semi-finished slabs from these countries (Mexico is a major supplier) are excluded from the tariff-rate quota, which has been accordingly reduced from the level recommended by the ITC, from a first-year total of 7.0 million tons to 5.4 million tons.

- ***Imports from WTO-member Developing Countries.*** These products are also exempted from the remedy tariffs in most cases, with "developing country" status determined by a country's eligibility for tariff-free import treatment under the Generalized System of Preferences. This exemption applies (in accordance with Article 9 of the Safeguard Agreement) as long as a developing country's "share of imports of the product...does not exceed 3 percent, provided that developing country members with less than 3 percent import share collectively account for not more than 9 percent of total imports of the product concerned." Major exceptions to the exemption include imports of flat products and semi-finished slabs from *Brazil*, with the latter also included under the tariff-rate quota. The President retains the discretion to impose safeguard measures on additional products from developing countries, should they surge during the relief period.[89] *China*, *Russia* and the *Ukraine* are excluded from this exemption, the latter two countries because they are not WTO members.

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[88]The presidential action and supporting documents are in 107th Congress, 2nd Session, House Doc. 107-185. *Message from the President of the United States Transmitting Documents Describing Safeguard Action Proclaimed on Imports of Certain Steel Products, Pursuant to Section 203 (a)(1) of the Trade Act of 1974.*

[89]*Inside U.S. Trade*, "Officials Weigh System to Modify Steel Safeguard to Prevent Surges," (April 5, 2002) reports that details of how to measure and implement this monitoring process will be decided by July 3, 2002.

- ***Specific Product Exclusions.*** The President will make final decisions on an initial list of specific product exclusions by July 3, 2002. Consideration for such exclusions has been limited to cases for which application was registered with the Office of the U.S. Trade Representative before the March 5 announcement of the presidential decision. Further consideration is being given to products for which exclusions have not yet been granted and the Office of the U.S. Trade Representative has indicated that it will give consideration to new requests for which application has not yet been made.

On this last issue, 1,200 requests have been registered already with USTR, and Secretary of the Treasury Paul O'Neill has stated, "I suspect that a significant proportion of them will be favorably decided."[90] More than 200 exclusions have already been determined, including those listed in the *Annex* to the presidential decision. The most significant in this initial list is the granting of a 750,000 MT quota to flat-rolled steel imports, defined to apply to imports from *Korea* for use in the U.S. Steel-POSCO joint venture rolling mill in California.[91] Similarly, complaints by *Australia* in response to the initial announcement of U.S. remedy tariffs led to a U.S. agreement to exempt 250,000 MT of hot-rolled steel. Together with the quota for slab imports, this means that Australia would receive an exemption equal to about 85% of its total exports to the United States.[92] On April 5, 2002, the Office of the U.S. Trade Representative announced additional product exclusions to those published in the annex to the March 5 proclamation.[93] Some other exclusion requests have been rendered moot by the general country exemptions.

USTR and the Commerce Department are "reconsidering" many requests for exclusions, on the grounds that the initial requests were too vague. Exclusion "requestors" were instructed to fill out a detailed product questionnaire and "objectors" had an opportunity to file equally detailed responses. The Commerce Department is now processing these requests, with a view to final decisions by July 3, 2002. Meanwhile, steel users who had not filed for product exclusions before March 5, 2002, were allowed until May 20 to do so. More than 800 new exclusion requests were received. USTR and the Commerce Department are now in the process of setting up a similar system of objection and evaluation for these requests. No date has yet been set for final decisions on the new requests.

Decisions on exclusions "that do not undermine the objectives of the safeguard measures" are to be made on the basis of the following considerations:

- Is the product currently being produced in the United States?
- Is substitution of the product possible?
- Do qualification requirements affect the requestor's ability to use domestic products?

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[90]In an interview with BBC radio, quoted in AISI *Steel News* (April 15, 2002).

[91]House Doc. 107-185, *Annex*, at para. 11(b)(xxiv). See *AMM*, March 8, 2002.

[92]*DER*, "Australia's PM Welcomes U.S. Concession on Hot-Rolled Steel after Safeguard Decision," (March 13, 2002).

[93]*Federal Register* (April 5, 2002), pp. 16484-86.

- What is the level of product inventories?
- Is the product under development by a U.S. producer who will minimally be able to produce it in marketable quantities?[94]

Domestic reaction to President Bush's decision was generally what would have been expected from the Section 201 proceedings. The domestic steel industry was highly favorable in its comments on the Bush decision, even though the President stopped somewhat short of the highest recommended relief tariff levels. The president of AISI, the CEOs of Nucor and U.S. Steel, and the "Minimill 201 Coalition" all praised President Bush for imposing high-level remedy tariffs.[95]

But a number of favorable comments were nuanced by an emphasis on a need to see through a successful industry restructuring and, particularly, to address legacy costs. In a comment that was echoed by Leo Gerard of the USWA and also in the comments of U.S. Steel's President Usher, Senator Jay Rockefeller noted that he welcomed the President's support on Section 201. But he added that the "President's remedy leaves West Virginia steel in jeopardy...The next big step in this battle is to address the 600,000 retirees who could lose their health benefits...The President is going to have to address, and support legacy costs, or else the industry will not have the flexibility it needs to consolidate and restructure." Rockefeller clarified that U.S. policy should prevent the U.S. industry from being "bought up by foreign steel cartels" that did not care about U.S. workers and jobs.[96] Gerard indicated that legacy cost relief would be the union's priority, and that he was working with Rockefeller and others on a legislative solution.[97] Later, at the March 14 Senate hearing on legacy costs, Gerard also noted the numerous requests for exclusions and exemptions that could weaken the impact of trade relief, and that he would particularly watch how the Administration would handle Brazil's request for additional product exemptions.

Correspondingly, the reaction from representatives of the consuming industries was highly unfavorable. The heads of CITAC, the American Institute for International Steel and the Emergency Committee on American Trade, all of which testified in the ITC proceedings against remedy relief, issued statements critical of the Bush policy. In their view, the relief measures would damage consuming industries without effectively restructuring the American industry. They also felt that a resulting backlash against the Bush measures would damage the prospects of trade liberalization through the upcoming WTO negotiations and also the direct interests

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[94]*AMM*, April 15, 2002; Office of the U.S. Trade Representative. "Information on product Exclusion Requests under Section 203," with further details at www.ustr.gov/sectors/industry/steel201/203update. Updated information is at this USTR website.

[95]See a summary of responses in *AMM*, (Mar. 6, 2002); also, Minimill 201 Coalition press release (Mar. 5, 2002) and AISI, *Steelworks News Digest* (Mar. 5, 2002).

[96]Sen. Rockefeller, press release, March 5, 2002.

[97]*AMM*, March 7 and 11, 2002.

of U.S. exporters.[98] *Business Week* reported that by the end of May 2002, "New tariffs on imported steel have sent [steel] prices soaring 9.6% so far this year," while steel consuming industries, such as automobiles, have seen their final product prices fall, unlike the situation after the 1991 recession.[99]

The response of Members of Congress opposed to tariff relief was described as "muted."[100] Representative William Jefferson, emphasizing the potential damage of the remedy tariffs to the Port of New Orleans in his district, did introduce H.J. Res. 84, to overturn the President's policy. His bill would have utilized a provision under Section 201, whereby Congress may, through a joint resolution, replace the President's decision with the formal position of the ITC. Rep. Jefferson noted that the ITC position, from his point of view, was hardly ideal, since he preferred no remedy tariffs and the ITC tariff levels (as recommended by three members, and therefore the formal position) were as high as 20%. But this was still less than the tariffs imposed by the President, and therefore offered an opportunity to vote in opposition.[101] H.J. Res. 84 was referred to the House Ways and Means Committee. It was reported unfavorably on April 24, and tabled by procedural votes on the House floor on May 8, 2002.[102]

International Reaction and Negotiations

The Section 201 case is but one prong of the Bush Administration global steel policy. The Administration has initiated international negotiations on global capacity reduction and improved trade discipline in the steel industry, within the forum of the Organization for Economic Cooperation and Development (OECD). Meanwhile, the Administration has continued to apply U.S. AD/CVD laws and to defend them before the WTO – and such cases are still going forward, despite the Section 201 decision.[103] From U.S. trading partners' perspective, the apparent response has been to seek to overturn Section 201 protective tariff relief and U.S. AD/CVD rulings through WTO challenges, and possibly through longer-term renegotiation of WTO rules governing application of AD/CVD laws.

The *European Union* (EU) has reacted most aggressively so far to the Section 201 decision on steel. It immediately forwarded two separate requests for consultation with the U.S., under the general WTO dispute settlement rules and the provisions of the WTO Safeguards Agreement. The EU has cited 10 specific

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[98]See summaries and quotes in *AMM*, (Mar. 7, 2002), and *Inside U.S. Trade*, Mar. 5, 2002.

[99]*Business Week*, "Raising Prices Won't Fly," June 3, 2002.

[100]*AMM*, March 7, 2002.

[101]*DER*, "Rep. Jefferson Announces Challenge to Bush Decision to Impose Tariffs on Steel," March 8, 2002.

[102]*DER*, "House Crushes Move to Overturn Controversial Safeguard Steel Tariffs" (May 9, 2002).

[103]See, for example, *AMM*, April 5, 2002.

violations of WTO rules in the U.S. conduct of the 201 case, as well as in the final presidential decision.[104]

The European Commission also stated that it could impose retaliatory tariffs almost immediately under provisions of Article 8 of the Safeguards Agreement. A WTO member may "suspend" concessions for another member in lieu of compensation for a safeguard action. But under Article 8.3 it cannot suspend concessions (impose retaliatory tariffs) within the first three years of the imposition of safeguard measures "provided that the safeguard measure has been taken as a result of an absolute increase in imports" and otherwise is in conformity with the Safeguards Agreement. The EU claims these conditions have not been met. The absolute peak in U.S. steel imports occurred in 1998 and, as shown earlier in Figure 1, declined substantially in 2001.[105] The European Commission has estimated that the compensation owed for the Section 201 steel measures could be as high as $2.5 billion. In its initial retaliation list, the Commission has proposed a narrower target of 100% tariffs on about $350 million of imports from the United States (steel products, fruit, rice, textile products, gaming equipment and firearms), selected to have a maximum domestic U.S. political impact and to be imposed in June 2002, if no agreement with the United States on compensation is reached by then. A broader list of more than $500 million is proposed for a second round of retaliation, if initial WTO rulings support the EU position.[106] While this tactic has never been applied by a WTO member without awaiting any WTO ruling on the validity of safeguard measures, the European Commission is preparing to move ahead with the support of its member countries.[107] In response to the EU's threatened actions, U.S. ambassador to the WTO Linnet Deily said that, "Demands for compensation or retaliation based on...disputed points would amount to a unilateral end-run of the WTO's dispute settlement rules."[108]

Japan, *New Zealand*, *Korea*, *Norway*, *Switzerland*, and *Brazil* have all filed requests for dispute settlement consultations under WTO Safeguard Agreement rules, although Korea and Brazil have gained exemptions and quotas for major product

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[104]*DER*, "EU Sets Out Case Against U.S. Steel Tariffs, Says Measure Violates 10 WTO Provisions," (March 14, 2002).

[105]Such retaliation was analyzed in detail by Warren H. Murayama in a memorandum subsequently released by the Emergency Committee for American Trade (Jan. 24, 2002).

[106]*Inside U.S. Trade*, "EU Launches Two-Pronged Attack on U.S. over Steel Tariffs," and "EU Sets Desired Compensation in Steel Dispute at $2.5 Billion" (Mar. 8, 2002); *New York Times*, Mar. 27, 2002; *Inside U.S. Trade*, "European Commission Proposes Two Retaliation Lists Against U.S. Goods," (Apr. 19, 2002); *Financial Times*, April 20-21, 2002; *DER*, "EC Issues Pared-down List of U.S. Exports To Be Targeted for Sanctions in Steel Spat," (April 22, 2002).

[107]European Commission. Press release, May 7, 2002. *DER*, "EU Member States Line Up with EC Plans to Sanction U.S. In June for Steel Tariffs," May 8, 2002.

[108]Letter of Ambassador Linnet F. Deily (March 11, 2002), circulated to all WTO member missions.

imports.[109] Japan is also seeking compensation under safeguard rules, and has joined the EU in threatening early retaliation against U.S. imports, though this would only involve $5 million in U.S. steel exports to Japan, if this request is not met.[110] Critics of the U.S. policy noted the recent precedent of a WTO decision in a case brought by Korea against the Section 201 tariffs on line pipe, wherein it was determined that the U.S. remedy was not clearly limited to a specified level of injury.[111]

Brazil, with significant exports covered by the Section 201 decision, but other products exempted, long deliberated what actions to take against the United States, if any, under WTO rules. The foreign minister has warned that the U.S. policy could impact other trade negotiations, especially the effort to create the Free Trade Agreement of the Americas. The U.S. Trade Representative visited Brazil March 11-14, in part to consult on this issue.[112] Brazil is a significant beneficiary of the U.S. developing country exemption. Even though its slab imports are not excluded from the remedy tariffs, Brazil alone has received 52% of the initial Section 201 remedy quota.[113] But on May 21, 2002, Brazil filed its own request for consultations under the WTO dispute settlement rules.

The policy of *China* has seemed somewhat uncertain in response to the U.S. Section 201 decision. On March 21, 2002, in its first formal action as a WTO member under the Dispute Settlement Understanding, China requested consultations with the United States, as well as requesting to join the EU consultations. China also subsequently requested compensation for damage to its exports resulting from Section 201, then asked instead for an exclusion.[114]

The response of *Russia* was complicated by a brief and simultaneous dispute over U.S. chicken exports as well as broader trade issues such as Russian membership of the WTO and the establishment of normal U.S.-Russian trade relations by ending the application to Russia of the Jackson-Vanik restrictions and

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[109]*DER*, "U.S. Blocks Establishment of WTO Panel to Review Steel tariffs; EU Will renew Bid" (May 23, 2002).

[110]U.S. Secretary of Commerce Don Evans has noted that Japanese imports have already been given a large number of product exclusions in the implementation of the Section 201 policy, and that the Administration will not provide any further compensation; *DER*, "Secretary Evans Says EU Action Against U.S. over Steel Tariffs 'Very Dangerous'" (April 22, 2002); *Financial Times*, May 16, 2002; *AMM*, May 20, 2002. The EU, Japan, Korea, China, Switzerland and Norway have issued a joint press statement that defines their common position in seeking WTO relief under the Dispute Settlement Understanding, published in *Inside U.S. Trade*, April 12, 2002.

[111]*DER*, "Countries Blast U.S. on Steel Safeguard, Say Move Will Not Withstand WTO Scrutiny," (Mar. 11, 2002); *American Metal Market* (Mar. 13, 2002).

[112]*New York Times* (March 14, 2002). *AMM* (March 13, 2002).

[113]Cited in *DER*, "USTR Zoellick Says over 1,000 Exclusion Requests Received on Steel Safeguard Tariffs," March 20, 2002.

[114]*Inside U.S. Trade*, "China Requests Formal WTO Consultations on U.S. Steel Safeguards," (Mar. 27, 2002); *DER*, "China Pushes for Exclusion from U.S. Steel Tariff Hikes, Drops Demand for Compensation," (April 4, 2002).

other requirements of the Trade Act of 1974.[115] The Russian economic development minister has suggested that Russia may withdraw from the bilateral steel trade suspension agreement with the United States because of the new situation created by the Section 201 tariffs, and the failure of the Bush Administration's exemptions to include Russia. However, after a bilateral meeting on April 16, U.S. Commerce Secretary Don Evans said that the Bush Administration is considering changing Russia's status under U.S. trade laws from a "non-market" to a "market" economy, in time for a visit by President Bush to Russia on May 23-26, 2002.[116]

Citing a threat of diversion of steel from the U.S. market, a number of other countries have announced the imposition of their own safeguard measures on steel imports. *Mexico*, which set a 25% safeguard tariff on non-NAFTA steel imports in 2001, will raise it to 35%. *Canada* has supported the U.S. Section 201 policy, although the Canadian industry and union also urged safeguards against any diversion of steel from the U.S. market. On March 22, 2002, the Canadian government initiated its own safeguard investigation in response.[117] The largest market to initiate such anti-diversion safeguard measures is the *EU*. Noting that steel imports had already risen from 15.4 million MT in 1997 to 26.6 million MT in 2001, the European Commission announced provisional tariffs of 15% to 26% for six months on a series of 15 products considered likely to be affected by the trade fallout from the U.S. measures. All products were given a quota of the average annual import level for 1999-2001, plus 10%. The six-month period will be used for an investigation to establish the need and level for definitive safeguards. The U.S. Trade Representative has requested consultations with the EU on its safeguard actions.[118] In addition, Malaysia, Venezuela and Taiwan have indicated measures to implement steel trade safeguard measures, following upon the U.S. action. On May 24, 2002, China, the largest net steel importer outside the United States, joined these countries with an announcement of safeguard duties from 7 to 24% on a wide range of products.[119]

In recognition of the global nature of steel industry issues, other governments agreed to join representatives of the Bush Administration in discussing overcapacity and trade issues at the OECD. Despite the disruptions of the September 11 terrorist

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[115]*DER*, "Russia Moves to Lift Ban on Imports of U.S. Poultry but Some Curbs to Stay" (April 16, 2002).

[116]*AMM*, April 17, 2002; *Inside U.S. Trade*, "Russia Considers Ending Steel Restraint Agreement with U.S." (Apr. 19, 2002); *DER*, "U.S. May Revoke NME Status for Russia by May Summit; Steel, WTO Issues Discussed," (April 17, 2002).

[117]Canada Dept. of Foreign Affairs and International Trade, press release (Mar. 5, 2002); *DER*, "Fearing Steel Diversions from U.S. Market Canada Union, Industry Demand Safeguards" (March 12, 2002) and "Canada Initiates Safeguard Action to Block Diversion of Offshore Steel," (March 26, 2002).

[118]European Commission. EU News Release 15-02 (March 27, 2002); *DER*, "EC Introduces Temporary Safeguards to Offset Expected Increased Steel Imports" (Mar. 28, 2002), and "U.S. Requests WTO Talks with EU on Safeguard Tariffs on Steel Imports" (Apr. 9, 2002).

[119]*DER*, "China Outlines Tariff Hikes on Steel Imports in Response to U.S. Safeguard" (May 24, 2002).

attacks, the initial discussions took place on September 17-18, 2001, at the meeting in Paris of the OECD steel committee and have continued over the succeeding months. They have so far produced indications of global capacity reductions of about 91-95 million metric tons (MT) of crude steelmaking capacity by the end of 2002 and another 23-33 million MT by 2005. This total includes roughly equal U.S. and EU projections of 15-20 million MT of reductions. The participants did agree to meet again in September 2002, both to consider in more detail reduction offers in the Capacity Working Group and to try, where they have been so far unsuccessful, in establishing the basis for considering the topics to be addressed in the Disciplines Study Group.[120] The talks are continuing as scheduled, despite the ongoing safeguard actions. The EU had earlier threatened to pull its capacity reduction offer off the table, if the U.S. enacted "unilateral" Section 201 safeguard measures.[121]

Other Steel Trade and Industry Measures

Antidumping and Countervailing Duties

The U.S. steel industry has filed numerous petitions under existing U.S. antidumping and countervailing duty (AD/CVD) trade law. In a recent report, Edward Gresser of the Progressive Policy Institute calculated, based on Commerce Department data, that, "...About 130 of the nearly 260 antidumping orders now in force, affecting 32 different countries, are on steel products; likewise, 30 out of the 50 countervailing duty orders in force affect steel."[122]

AD/CVD cases are still being filed while the Section 201 process goes on. For example, furnace coke producers, whose product was not covered in the Bush Administration 201 case, instead filed an antidumping case against products from Japan and China. In this case the ITC in early August 2001 voted 3-2 against an injury determination.[123] On September 28, 2001, four major U.S. integrated steel producers (Bethlehem, U.S. Steel, LTV, and National Steel), who supply the majority of domestically produced cold-rolled steel, filed an antidumping case against cold-rolled imports from 20 countries. According to a Bethlehem Steel statement, "Imports from these countries now represent over 80% of all imports of cold-rolled steel products." The petitioners also filed a subsidy case against four of the countries

[120]OECD, "Conclusions of the High-Level Meeting on Steel on 17-18 December, 2001," and "High-Level Meeting on Steel, 7-8 February, 2002" and "High-Level Meeting on Steel, 18-19 April 2002." *Inside U.S. Trade*, "OECD Talks Yield No Progress on Scope of Steel Subsidies Pact" and "Countries Divided over Scope of Steel Disciplines in OECD Talks," April 19, 2002. See also earlier summaries in *DER*, "Countries Identify More Steel Overcapacity; U.S. Wants to See More Progress on Totals" (Feb. 11, 2002). On the U.S. presentation, see *Inside U.S. Trade*, Dec. 28, 2001.

[121]*Financial Times*, December 19, 2001.

[122]Edward Gresser, *Kind to Be Cruel* (Progressive Policy Institute report, April 2002), p. 3.

[123]*AMM*, August 13 and September 25, 2001.

(Argentina, Brazil, France and Korea).[124] Meanwhile, the Department of Commerce found that nine countries are dumping hot-rolled steel in the United States and that producers in four countries are receiving countervailable subsidies. The ITC has subsequently found material injury in these cases, thereby allowing final AD/CVD duties to be imposed.[125] On April 3, 2002, the Commerce Department announced preliminary antidumping duties of as much as 370% on wire rod imports from seven countries.[126]

Other countries have resisted U.S. AD/CVD laws and have alleged that the application and administration of the laws may infringe U.S. WTO obligations. The United States has recently lost two WTO cases related to steel that were critical of U.S. AD/CVD laws, including a statute authorizing a private right of action and criminal penalties for dumping. The outcome of these cases would require the U.S. to amend its laws or provide compensation to the complaining parties.[127] The EU also filed in 2001 a claim against U.S. countervailing duties on steel imports from Germany, Italy, France, Spain and Sweden. If the EU wins the case, it could reduce the collected penalty duties. The basis for this case is a WTO panel decision in 2000 that American countervailing duties against imports from the private-sector successor to the British Steel Corporation were illegal. The U.S. duties were based on the theory that the new company still benefits from the forgiveness by the British government of past loans. The European Commission now holds that similar duties are being applied by the United States in other cases involving European exporters. In the Commission's view, the controlling circumstance is that there are no continuing subsidies being paid by national governments.[128]

More fundamentally, Members of Congress are concerned that the U.S. Trade Representative, in reaching agreement with WTO partners to begin a new trade negotiation, has accepted that antidumping rules will in some measure be opened for discussion in that negotiation.[129] In response, the Senate adopted an amendment, co-

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[124]*DER*, "U.S. Producers File Trade Case Against Cold-Rolled Steel Exporters," October 1, 2001; *AMM*, October 2, 2001.

[125]*DER*, "Commerce Finds Nine Countries Are Dumping Hot-Rolled Steel," September 26, 2001; U.S. International Trade Commission. Press release 01-129 (November 2, 2001); *AMM*, November 5, 2001.

[126]*Ibid.*, April 3, 2002.

[127]*DER*, "EU Wants to 'Mirror' Illegal U.S. 1916 Act, with Japan Will Make Unique WTO Request" (Jan. 9, 2002); "U.S., Japan Agree on Arbitration to Implement Hot-Rolled Steel Deadline" (Nov. 27, 2001); and, "WTO Sets Compliance Deadline for U.S. to Meet Hot-Rolled Steel Order" (Feb. 20, 2002).

[128]*DER*, "EU Will File WTO Challenge to Duties U.S. Imposed on Some Steel Imports," July 23, 2001. A decision is expected by late May 2002; and, "WTO Announces Delay on Panel Rulings on U.S. Dumping, Countervailing Measures" (April 23, 2002).

[129]See, for example, statement of Sen. Robert Byrd, *Congressional Record* (Nov. 16, 2001), pp. S11985-6. However, a House resolution initially intended to instruct USTR not to renegotiate U.S. AD/CVD laws was subsequently replaced by a more flexible version. See *Inside U.S. Trade* analysis, "House Effort Could Enable U.S. to Put Trade Laws on Table

(continued...)

sponsored by Senators Craig and Dayton, to the bill providing President Bush with "fast-track" trade negotiating authority (H.R. 3009). It would require a separate vote on any changes to specified sections of U.S. trade law – notably the antidumping and countervailing rules. An effort to table this amendment was defeated 61-38, despite reported veto threats by the Administration. While it has been widely reported that the provision could disappear in the House-Senate conference, more than 100 House Democrats, including some active on steel issues, wrote Speaker Dennis Hastert on May 23 to urge inclusion of the provision in the final conference report.[130]

Clinton Administration Section 201 Case on Steel

The steel industry has already received limited import relief under Section 201 safeguard actions undertaken by the Clinton Administration in 1999-2000 regarding steel wire rod and line pipe products. The remedies have been questioned under WTO procedures by Korea and the EU. The initial WTO dispute settlement panel on October 29, 2001, found that the Korean claims were partly valid, but rejected other elements of the Korean case.[131] However, when the case was brought before the Appellate Body of the WTO, their ruling in February 2002 substantially upheld much of the Korean case. They found, in particular, that the U.S. government mishandled the exemption of NAFTA partners from the line pipe remedy tariffs and, very significantly for upcoming WTO cases on the Bush 201 remedies, had not adequately linked remedies to the actual levels of injury caused by imports as opposed to other causes. The case marked the latest in a series of successful challenges to U.S. Section 201 actions before the WTO.[132]

At the same time, U.S. wire rod producers were also disappointed that the remedies did not apply to NAFTA competitors, and succeeded in gaining a subsequent ruling from the ITC that imports from these sources are indeed a substantial cause of injury to the industry.[133] President Bush responded by adjusting the tariff rate quota (TRQ) to allow shares according to historical sources of imports, instead of allowing all imports to fill the TRQ on a first-come, first-served basis. The change satisfied the EU, which dropped its WTO case. The President also

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[129](...continued)
at WTO," (Nov. 9, 2001). But an analysis by a veteran observer of the WTO, R.K. Morris, who attended the WTO meeting, emphasizes that the ministerial declaration allows only a narrow scope for renegotiating AD/CVD rules, "An NGO Looks Back: Lessons from the WTO's Ministerial Meeting in Doha, Qatar," *Global Positions*, III:1 (Jan. 7, 2002), pp. 4-5.

[130]*Congressional Record* (May 14, 2002), pp. S4299-4326; *DER*, "House Democrats Push to Include Dayton-Craig in Trade Conference Bill" (May 24, 2002).

[131]*DER*, "South Korea Welcomes WTO Ruling on Steel Pipe, Says Implications Wide" (October 30, 2001).

[132]*Ibid.*, "WTO Appellate Body Upholds Ruling Against U.S. Safeguard on Line Pipe Imports," February 19, 2002.

[133]*AMM*, August 23, 2001; *DER*, "ITC Says Import Surge of Wire Rod from Canada, Mexico Is Undermining Relief," August 24, 2001.

considered bringing NAFTA imports under quota restrictions, but decided not to do so.[134]

Trade Law Reform Proposals

The steel industry's problems and dissatisfaction with the solutions helped inspire efforts in the 106th Congress to change U.S. trade laws, as they affect import relief. This effort has been renewed in the present Congress. In H.R. 1988, a bipartisan group of House Ways and Means Committee members has renewed an effort to make it easier for import-impacted industries to win safeguard and AD/CVD cases before the ITC, as well as to implement an import monitoring system that would provide quicker reports on sensitive products. This legislation would also require the ITC to exclude in-house "captive production" when calculating the market to determine levels of import penetration. A companion Senate bill (S. 979) has been introduced.[135] On the other hand, Rep. Jim Kolbe and two co-sponsors on August 2, 2001, introduced a measure establishing conditions under which "industrial users" of imported products subject to AD/CVD penalties could appeal to have duties removed on a temporary basis for up to one year (H.R. 2770). The legislation would also establish standing for consumers of products in AD/CVD cases.

The Byrd Amendment (Continued Dumping and Subsidy Offset Act)

Inspired in part by the ongoing financial difficulties of parts of the U.S. steel industry, the Continued Dumping and Subsidy Offset Act (CDSOA), was signed into law in October, 2000. The CDSOA is known as the "Byrd Amendment," because the West Virginia Senator, then ranking member of the Appropriations Committee, succeeded in adding it to the FY2001 Agriculture appropriations bill (P.L. 106-387).[136] It requires antidumping and countervailing duties to be deposited in a special account, from which the domestic industry petitioners who meet eligibility criteria may draw funds to offset expenses incurred as a result of the dumped or subsidized imports.

On June 26, 2001, the Customs Service proposed rules to implement the Byrd Amendment. A preliminary list of eligible "affected domestic producers" was identified by the ITC, based on petitioners in 400 active dumping cases. This list of 2,000 potentially eligible producers was posted on the Customs website.[137] To be eligible for a distribution, producers must still be in operation and making the product for which a dumping or subsidy injury was found.

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[134] *Inside U.S. Trade*, "U.S. Carves EU Share in Wire Rod Quota, as EU Agrees to Drop Case," November 30, 2001; *DER*, "Canada's Pettigrew Likes Decision by United States on Wire Rod Imports," December 4, 2001.

[135] For a general view of trade law reform, see Cooper, CRS Rpt. RL30461, *Trade Remedy Law Reform in the 107th Congress*.

[136] P.L. 106-387; see *ibid.*, pp. 7-8.

[137] See http://www.customs.gov/news/fed-reg/notices/dumping.pdf.

The Customs Service was required to distribute funds to claimants within 60 days of the beginning of the fiscal year starting October 1, 2001. Funds may be used by claimants for a wide range of purposes, including training, employee health care and pension benefits, as well as improvement of manufacturing technology and equipment, and R&D expenditures.[138] A total of $207 million was distributed in December, 2001, to 130 U.S. companies – about half of them steel mills and iron foundries. But individual totals in most cases were relatively small: the largest reported payouts to steel companies were about $4 million each to Bethlehem Steel and AK Steel. The largest single payouts under the program were for $63 million to Torrington Co. and $31 million to Timken Co., two ball bearing manufacturers.[139]

U.S. trading partners believe that use of penalty tariffs to subsidize a competing domestic industry, as under the Byrd Amendment, contravenes WTO rules. The European Union, Japan, Canada, and eight other U.S. trading partners initiated a WTO dispute settlement proceeding. The WTO Dispute Settlement Body heard oral arguments in February, and the decision is expected in July 2002.[140]

Export-Import Bank Loans

The Senate Banking Committee on July 18, 2001, considered an amendment to the U.S. Export-Import Bank reauthorization (S. 1372) bill to prevent it from lending to any project associated with a foreign company accused of dumping. This followed a December 2000 loan guarantee of $18 million, over the reported objections of the Clinton Administration, to upgrade the Benxi, China steel mill, which the Commerce Department subsequently found to be dumping in the U.S. market. Senators Bayh, Shelby, and Stabenow co-sponsored an amendment in committee to ban any financial support by Ex-Im to foreign companies accused of dumping, but the amendment was withdrawn. Meanwhile, Ex-Im itself on July 16, 2001, announced proposed modifications to its procedures for consideration of potentially adverse U.S. domestic economic impact of proposed Ex-Im loans and guarantees.

On the House side, Representatives Peter Visclosky and Alan Mollohan co-sponsored an amendment to the Foreign Operations appropriations bill (H.R. 2506) to reduce Ex-Im support by the $18 million amount that the bank guaranteed for the Benxi project. After a sustained floor debate, the Visclosky-Mollohan amendment passed by a vote of 258-162. The subsidy appropriation for loan guarantees was reduced by $15 million and a further $3 million was deducted from Ex-Im's

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[138]*Federal Register*, June 26, 2001, pp. 33920-26; Aug. 3, 2001, pp. 40782-40800; Sept. 21, 2001, pp. 48546-55; and, Sept. 27, 2001, p. 49451.

[139]U.S. Customs Service. "U.S. Customs Publishes List of First Disbursements under the Continued Dumping and Subsidy Offset Act of 2000," press release (Jan. 30, 2002), and list, "CDSOA FY2001 Disbursements by Claimant;" *AMM*, April 8, 2002.

[140]*Inside U.S. Trade*, "Nine U.S. Trading Partners File WTO Request on Byrd Law," July 13, 2001; *DER*, "Arguments on Byrd Amendment Due Dec. 6, WTO's Wasescha Tells WTO Complainants" (Nov. 29, 2001); "WTO Members Outline Case Against Byrd Amendment; First Hearing Set for February" (Dec. 10, 2001); "WTO Announces Delay on Panel Rulings on U.S. Dumping, Countervailing Measures" (April 23, 2002).

administrative expenses appropriation. The funds were transferred to the child health and survival programs in Title II of the same bill.[141]

On September 20, 2001, Ex-Im announced the final changes in its own internal review procedures. The bank will not prohibit outright financing for a company subject to a preliminary AD or CVD investigation, but has decided that an investigation is a "potential indicator" of commodity oversupply. It would be a "yellow flashing light," though not a "stop sign," for a proposed transaction. But the next day Rep. Patrick Toomey offered an amendment in a Financial Services subcommittee markup of the Ex-Im reauthorization bill (H.R. 2871), which would have banned financing for "any entity" subject to AD/CVD and Section 201 investigations. Toomey's amendment was criticized by supporters of Eximbank and U.S. business interests. It lost by a single vote (11-10).[142] Rep. Toomey reintroduced a modified version of his amendment at the full committee level on October 31, 2001, and this version was approved by voice vote. The bill now would ban financing to an entity in an industry from a country subject to an actual AD/CVD order or Section 201 injury determination.[143]

Final action on long-term reauthorization was still pending as the first session of the 107th Congress came to an end. Ex-Im was reauthorized to continue operating through the balance of FY 2002 in the final version of the Foreign Operations appropriations bill (H.R. 2506), which was signed into law by President Bush on January 10, 2002 (P.L. 107-115). P.L. 107-115 also provides for a subsidy appropriation of $727 million for Ex-Im operations, which is $138 million less than in FY 2001, but almost $100 million higher than the Administration's request. It also provides a $1 million increase over FY 2001 funding for administrative expenses, to a total of $63 million.[144] Meanwhile, the language from Rep. Toomey's amendment has reportedly been included in the House-Senate conference version of the longer term reauthorization bill, as agreed in late May 2002.[145]

National Security Issues and the Iron Ore/Semi-Finished Steel Case

The role of steel in U.S. national security was raised earlier in this report during the discussion of the Section 201 steel trade case. In particular, a number of Members of Congress mentioned the issue during appearances before the ITC hearings. On December 6, 2001, three steel industry associations, in cooperation

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[141]*Congressional Record*, July 24, 2001, pp. H-4437-47.

[142]*DER*, "House Panel Narrowly Defeats Amendment Restricting Ex-Im Funding," September 24, 2001.

[143]*DER*, "Ex-Im Bank Reauthorization Bill Clears House Panel with New Restrictions on Loans," November 1, 2001.

[144]See House Conference Report 107-345, and compare to House Rpt. 107-142 and Senate Rpt. 107-58.

[145]*AMM*, May 24, 2002; *DER*, "Short-Term Ex-Im Extension Expected, as Lawmakers Complete Conference Bill" (May 23, 2002).

with the USWA, issued a special report emphasizing the critical role of steel in U.S. national defense and economic security. The report examined the direct and indirect uses of steel that are critical both in direct defense applications and to "U.S. economic and infrastructure security." The report says that even opponents of industry trade relief acknowledge the importance of specialty steels in defense applications, such as the F-22 and F-18 E/F jet fighters, but that only a broad and commercially viable domestic steel industry can remain a reliable collaborator with the Defense Department, or in programs such as the Specialty Metals Processing Consortium with Sandia National Laboratory. The report estimates that 5.5 million tons are directly or indirectly utilized annually in all forms of defense applications. Beyond such DOD procurement use, the report also stresses the role of steel in maintaining infrastructure critical for U.S. economic security. The report argues that foreign sources cannot be relied upon with respect to either price or timeliness, if a broad and viable domestic steel industry is not maintained.[146]

Under Section 232 of the Trade Expansion Act of 1962, the President may act to "adjust imports," if the Secretary of Commerce has found that they threaten to impair national security. Among the criteria for determining the effect on national security are the effect on "the economic welfare of any domestic industry essential to our national security" and the "displacement of any domestic products causing substantial unemployment..." Administrations have rarely taken positive action under Section 232, although in 1979 and 1982, Section 232 was used as the legal basis to ban oil imports from Iran and Libya.[147]

In January, 2001, Representatives James Oberstar and Bart Stupak wrote outgoing Secretary of Commerce Norman Mineta to request a Section 232 investigation into the upstream iron ore and semi-finished steel industries, which have been under heavy pressure from import competition.[148] On February 1, 2001, the Commerce Department announced that it was initiating an investigation under this provision to "determine the effects on the national security of imports of iron ore and semi-finished steel." Section 232 investigations are conducted by the Bureau of Export Administration (BXA). It held public hearings in July, 2001, in Minnesota and Michigan, and forwarded its report to the White House on October 29, 2001, under terms of the schedule provided by law. The President had three months to consider the Department's findings and recommendations for action.[149]

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[146]*A Strong U.S. Steel Industry: Critical to National Defense and Economic Security*. Jointly issued by AISI, Specialty Steel Industry of North America, Steel Manufacturers Association and USWA (December, 2001).

[147]U.S. Department of Commerce. Bureau of Export Administration, Office of Strategic Industries and Economic Security. *Section 232 Investigations: The Effects of Imports on the National Security* (January, 2001).

[148]Text of letter in *Inside U.S. Trade* (January 26, 2001).

[149]U.S. Department of Commerce. Bureau of Export Administration, Office of Strategic Industries and Economic Security. "National Security Investigation of Imports of Iron Ore and Semi-Finished Steel," www.doc-bxa.bmpcoe.org/dmrii_ironore.html; *Federal Register*, Feb. 6, 2001, p. 9067.

The Commerce Department released its report to the public on January 9, 2002. The report concluded that while iron ore and semi-finished steel were important to U.S. national security, "imports of these items do not threaten to impair U.S. national security." The report found that only 20% of U.S. iron ore and just 7% of semi-finished steel are imported. Even though one major iron ore mine was in the process of closing, sufficient other capacity exists to secure a domestic source of supply for the long term, the report found. Moreover, the primary sources of imports were Canada, Mexico and Brazil, all nations with which the United States has friendly relations, and one of which is a close military ally.[150]

The Defense Department (DOD) participated in the Section 232 process. It estimated that its demands for iron and steel for weapons systems are a small portion of the domestic industries' annual output: 325,000 tons annually, or about 0.3% of the total. Current demand was based on earlier defense plans to be able to maintain a "two major theater war," but as the quadrennial defense review had moved away from this standard, it was probable that DOD demand would be flat or lower for steel over the next five years, according to the Commerce Department report. The final report noted a wide variety of steel usage in other products procured by DOD, but stated that for all of these uses, domestic production levels were easily sufficient to meet industry needs. Furthermore, the report also noted that about half of this general domestic supply was met by minimills, which do not use iron ore or imported semi-finished slabs. Consequently, BXA recommended no action under Section 232 of the Trade Act.[151] Reps. Stupak and Oberstar criticized the BXA finding, as both noted continuing closures and pressure from imports in the iron ore and steel industries. USWA president Gerard believed the findings incompatible with statements made by President Bush and Homeland Security Director Tom Ridge regarding the national security importance of the steel industry.[152]

The House passed on November 28, 2001, the Defense appropriations bill, which contained a provision to require that "steel; or equipment, products or systems that are necessary to national security or national defense and that are made of steel" use only steel that is "melted or poured in the United States..."[153] This provision is much more sweeping than existing language in the Defense acquisition regulations, based on previous legislation. The Senate version of the bill contained a provision that was based on the narrower existing law and regulations. It refers only to "carbon, alloy or armor steel plate," and requires that such products must be "melted and rolled" in the United States (and Canada) to be eligible for procurement using DOD acquisition funds. The Senate language was adopted and included in the final Defense appropriations bill, which was signed into law by President Bush on January

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[150]U.S. Department of Commerce Bureau of Export Administration. *The Effect of Imports of Iron Ore and Semi-Finished Steel on National Security* (October 2001).

[151]*Ibid*., pp. 13-16, 37.

[152]*DER*, "Iron Ore/Semi-Finished Steel Imports Not Seen Threatening National Security," Jan. 10, 2002; and "USWA Blasts Administration Ruling on Imports of Iron Ore, Semi-Finished Steel," Jan. 11, 2002.

[153]Section 8158, H.R. 3338.

10, 2002.[154] On April 10, 2002, Reps. Stupak and LaTourette introduced H.R. 4161, which was similar to House-passed requirement of November 2001. It was referred to the Armed Services Committee.

The Steel Revitalization Act (H.R. 808/S. 957)

Introduced by Representatives Peter Visclosky and Jack Quinn, this is a comprehensive measure addressing the issues that affect the steel industry. The bill had 228 House co-sponsors by April 2002. A companion bill has been introduced in the Senate (S. 957), by Senator Paul Wellstone and three co-sponsors.

Title I of H.R. 808 would require the President to establish import quotas on steel products for five years, with monthly imports not to exceed the average of the three-year period leading up to the import surge that started in mid-1997. This title is modeled on H.R. 975, which passed the House in the 106th Congress by a vote of 289-141. The earlier bill, however, mandated quotas for only three years, in line with WTO standards, at least with respect to the length of temporary trade remedies. In a number of other major respects, Title I of H.R. 808 would appear to be highly questionable under WTO rules, and has probably been rendered moot by President Bush's Section 201 trade remedies.

Title II of HR. 808 would establish a 1.5% sales tax on U.S.-made steel products and imports to finance the health care benefits of certain steelworker retirees (the "legacy costs" discussed earlier in this report). This provision reflects an assessment that the financially troubled domestic steel industry can no longer support the health care commitments that were made in exchange for labor's acceptance of earlier downsizing agreements. H.R. 808 would establish a Steel Retiree Health Care Board in the Department of Labor, which would include labor and industry representatives. It would administer a Health Care Benefit Costs Assistance Program and a Steelworker Retiree Health Care Trust Fund, both to be established in this bill. The bill further establishes eligibility rules for participation in these programs. The Board would make projections on a yearly basis to determine necessary funds based on the size of the retiree pool. As the pool shrinks, the tax would be automatically reduced until it is phased out.

The USWA is the leading proponent of the legacy-cost-sharing provision of H.R. 808. It takes the position that a tax on steel sales is appropriate to support the legacy health care costs of steelworkers who were involuntarily retired during the 1980s or who may have lost their jobs during the late 1990s. But, although Title II addresses the legacy issues affecting the integrated steel producers, these companies do not at present formally support this provision. Moreover, as noted earlier, the minimills, in particular, are actively opposed. The Steel Manufacturers Association (SMA), which represents them as a group, has taken the position that "government assistance to troubled steel companies for continued operation or legacy costs is

[154]P.L. 107-117, Section 8033 (See House Conference Report 107-350).

unacceptable. That assistance is unfair to those steel companies who are not troubled."[155]

Efforts were made to address this issue in the post-September 11 economic stimulus package (H.R. 3090). Rep. Visclosky sought to add a version of Title II as an amendment to H.R. 3090 at the Rules Committee stage. Earlier, Representative Stephanie Tubbs Jones had introduced H.R. 3059, which would have provided for retiree health care by allowing steel companies a partial refund of net operating loss carryforwards in their tax bills, and supporters tried to add this provision to H.R. 3090.[156] But neither provision was included in H.R. 3090, when it passed the House on October 24, 2001.

Title III of H.R. 808 would modify and extend the Emergency Steel Loan Guarantee Act of 1999. This issue will be discussed in detail separately below. Title IV would create a new environmental compliance grant program for merged steel companies worth up to $100 million per company, but with the proviso that recipient companies cannot downsize production or employment more than marginally for a period of ten years, without being required to repay some or all of the grant. In addition to H.R. 808/S. 957, Senator Rockefeller has also introduced a bill (S. 910), which includes only the health care and environmental compliance titles of H.R. 808.

Alone among industry stakeholders, the USWA supports H.R. 808/S. 957. AISI has adopted a "neutral" position, favoring some corrective trade action, but preferring actions consistent with the WTO under Section 201, instead of legislatively mandated quotas.[157] SMA supports Section 201 action on trade, but opposes "legacy cost" policies that it believes would aid some elements of U.S. industry to the disadvantage of others. Some major integrated U.S. steel companies have now supported a different solution, embodied in S. 2189, discussed immediately below. CITAC, representing steel users, has been sharply critical of H.R. 808, as well as of President Bush's action in initiating a Section 201 investigation.

The decision in late November, 2001, of LTV to move from operating under Chapter 11 bankruptcy reorganization to liquidation under Chapter 7 stimulated an effort to discharge H.R. 808 from committee jurisdiction for immediate floor action (further discussion of the significance of the LTV liquidation follows in the section on loan guarantees). This discharge petition was filed by Rep. Dennis Kucinich on December 19, 2001, just before the end of the first session, and he has gained a total of 122 co-signatories, out of the 218-vote majority required.[158] LTV completed the liquidation process at an auction, currently scheduled for February 27, 2002. It

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[155]Steel Manufacturers Association. *On Ending the Steel Crisis: Statement on a Program Needed and Principles Underlying Its Implementation* (Feb. 9, 2001).

[156]*AMM*, October 16, 2001.

[157]"Steel Associations Trade Program," reproduced in *Inside U.S. Trade* (March 16, 2001).

[158]BNA *International Trade Reporter*, "Kucinich Secures 122 Signatures on Discharge Petition for Steel Bill," January 3, 2002.

arranged with the union to maintain some employee and retiree health care benefits for a limited period, but the plan has now been terminated.[159]

The Steel Industry Consolidation and Retiree Benefits Protection Act

The liquidation of LTV early in 2002 terminated the health care plan that covered more than 80,000 employees, retirees and dependents. The bankruptcy of Bethlehem Steel threatens an even larger number of steel company health plan beneficiaries. This problem was highlighted at a March 14, 2002, hearing before the Subcommittee on Aging of the Senate Health, Education, Labor and Pensions Committee. On April 17, 2002, Senator Rockefeller, co-chair of the Senate Steel Caucus, introduced S. 2189 on behalf of himself, his co-chair (Sen. Specter), the Majority Leader (Sen. Daschle) and six other co-sponsors. The bill is entitled the "Steel Industry Consolidation and Retiree Benefits Protection Act." As indicated by Sen. Rockefeller in his statement introducing the bill, part of the rationale is the belief that, "The American steel industry will not consolidate and will not survive without relief from their unique burden of substantial retiree health care costs."[160]

S. 2189 would add a new title to the 1974 Trade Act to establish a "Steel Industry Retiree Benefits Protection Program." The program would be financed by a new Steel Industry Legacy Relief Trust Fund, and administered by the Secretary of Commerce and a Board of Trustees. The purpose of the retiree benefits program would be to provide for continued health care coverage for retirees from a "qualified" steel company. Under Section 912 of the amended law, a "qualifying event" would be:

- acquisition of the company or its steelmaking operations by another company between January 1, 2000 and January 1, 2004;
- closure of a company operating under Chapter 7 or 11 bankruptcy during the same period;
- an unsuccessful attempt for at least two years to be acquired by other companies, or otherwise being threatened with imminent closure.

In addition to such company-specific events, once a total of 200,000 retirees and beneficiaries are participating in the federal retiree benefits program, any other steel company may choose to transfer its retiree health care beneficiaries to the program (a process described as a "qualified election").

Regardless of their original industry beneficiary program and status, the health care benefits of all participant retirees and beneficiaries are defined to be identical to Blue Cross/Blue Shield benefits under the Standard Plan of the Federal Employees Health Benefit Program, plus a $5,000 life insurance death benefit. The retiree benefits program is to be funded by a number of sources:

- tariff duties on steel mill products;
- retiree health care trust fund assets of qualified steel companies;

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[159] *AMM*, December 21, 2001.

[160] *Congressional Record* (April 17, 2002), p. S2842.

- a charge of $5 per ton of steel shipped annually from the capacity of an acquired steel company (or otherwise "qualified" company) for 10 years;
- retiree premiums;
- "appropriated funds" for shortfalls, as authorized annually in Section 931 of the bill.

Estimates of costs of the program have varied from $4 billion to $12 billion. The industry has not been unanimous in support of the legislation. Some large integrated steel mill companies, notably U.S. Steel and Bethlehem Steel, as well as the USWA, were reportedly consulted in developing the bill and have indicated their support. AISI and SMA have not supported the bill, and SMA president Thomas Danjczek was reportedly critical. "Let the market work, not the government," he said. "I'm concerned that the essential interests of some of my members are being sacrificed by the drive to get subsidy relief by some domestic producers."[161] In his statement introducing the legislation, Sen. Rockefeller acknowledged that "...This steel legislation will not happen without the active involvement of the President...without his support and quick involvement, we will not be able to get a bill through this Congress."[162] S. 2189 was referred to the Finance Committee.

While S. 2189 was being introduced, supporters of opening part of the Alaska National Wildlife Refuge (ANWR) for oil and gas exploration had attempted to link a steel legacy cost program to their legislation. Senator Ted Stevens introduced on April 16 a second-degree amendment (SA 3133) to the Murkowski amendment to S. 517, which would have used 45% of the royalties from ANWR oil and gas leases and operations for a period of 30 years to support a program similar to the retiree health care protection program in S. 2189. However, this effort failed on April 18, when the Senate refused to close debate on the Stevens measure by a vote of 64-36 against cloture.[163]

House Steel Legacy Cost Relief Bills

Similar legislation has been introduced in the House, but with some important differences. Representative Phil English and five Republican co-sponsors introduced the Steel Industry Legacy Relief and Transition Act on April 24, 2002 (H.R. 4574). This would establish a Steel Industry Legacy Relief Program within the Labor Department, managed by the Secretary of Labor. As in S. 2189, H.R. 4574 would be partially funded by Section 201 tariff duties, any existing health care fund assets, participants' premiums and a $5 per ton charge on the capacity of assets transferred to another company. Retirees would become eligible for coverage through domestic steel company acquisitions of another company, industry "rationalization," or participation in any company that was liquidated between "January 1, 2000 and May

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[161] *AMM*, April 19 and 22, 2002; *DER*, "Sens. Rockefeller, Specter Introduce Bill to Finance 'Legacy Costs' of Steel Industry" (April 19, 2002).

[162] *Congressional Record* (April 17, 2002), p. S2844.

[163] The underlying ANWR amendment also failed by a 54-46 vote against cloture. The texts of the amendments are in *Congressional Record* (Apr. 16, 2002), pp. 2732-41. See *Washington Post*, April 19, 2002.

1, 2002," dates established to include LTV and other retirees who have lost benefits. There is no "industry-wide election" provision as in S. 2189. Benefit levels are not legislatively established, but would in no case be higher than covered persons' benefits under their previous private sector plan.[164]

The Steel Industry Legacy Relief Act (H.R. 4646) was introduced by Representative John Dingell and 96 co-sponsors on May 2, 2002. This bill is very similar to S. 2189. The major difference is that while H.R. 4646 also establishes an "industry-wide" election process for transferring all steel retiree health care responsibilities to the "Steel Legacy Relief Trust Fund," it gives union representatives veto power over the transfer process. Thus, under this legislation, a company that was not in economic difficulties and whose retirees were therefore not eligible under the qualification provisions for transfer to the federal plan, would not be able to divest itself of legacy cost responsibilities unless each union representing 10% or more of its employees agreed. (Sec. 112(d)(2)(B)).

In addition to these bills, Representative James Traficant on March 14, 2002, introduced H.R. 3982. It would also use Section 201 steel tariffs in the funding of retiree health care benefits.

The Emergency Steel Loan Guarantee Act of 1999

This Act (P.L. 106-51) established a program to guarantee loans for restructuring and modernizing steel companies that were financially distressed following the 1997-98 import surge and industry financial crisis. The program guarantees loans up to a total of $1 billion (maximum of $250 million per company), with a maturity date no later than the end of 2005, in the original version of the program. In practice, the loan guarantee program has not played a major role in alleviating the latest industry problems. It has issued only one guarantee, for a loan of $110 million, that a company has subsequently been able to take up. The fixed deadline of five years for loan maturities in particular decreased the attractiveness of the guarantees to would-be lenders and investors.[165] Congress therefore extended the repayment deadline by ten years and made other changes to the program in an amendment to the FY 2002 Interior appropriations bill (P.L. 107-63). But these changes were not enough to enable LTV, the third-largest integrated steelmaker, to avoid the Chapter 7 liquidation process.

Title III of H.R. 808 addresses a number of aspects of the loan guarantee program, which, proponents argue, had made it difficult for companies to use. Provisions of the title include extension of the maturity date on guaranteed loans to the end of 2015. The bill would also increase the total amount of guaranteed loan

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[164]For commentary, see *AMM*, April 26, 2002.

[165] U.S. Department of Commerce. *Emergency Steel Loan Guarantee Program/Emergency Oil and Gas Guaranteed Loan Program: Annual Report of the Secretary of Commerce to the Congress for Fiscal Years 1999 and 2000*; see also the General Accounting Office report, *Financial Management: Emergency Steel Loan Guarantee Program* (GAO-01-714R).

coverage from $1 billion to $10 billion, increase the individual company limit to $500 million, and increase the portion of a loan eligible for the guarantee from 85 to 95%. H.R. 808 would also expand the definition of eligible companies to include coke-producing companies and eliminate the current $30 million program cap on loans to iron ore companies.

Congress dealt with some of these issues in the first session. The Senate on July 12, 2001, approved an amendment to the Interior Department and related agencies appropriations bill to extend and modify the Steel Loan Guarantee Program. It would prolong by 10 years, from the end of 2005 to the end of 2015, the deadline when loans guaranteed under the program must be repaid, as in H.R. 808. In conformity with this change, the amendment would extend the deadline for loan guarantee authorizations from 2001 to Dec. 31, 2003. The amendment also provides that the portion of a loan covered by a guarantee may be increased from the present level of 85% to 90% or 95%, provided that no more than $100 million in total loans may be outstanding at any one time under program guarantees at each of the higher guarantee rates, nor may any single loan at each higher rate be greater than $50 million. The original amendment also contained provisions affecting participation by iron mining and coke-producing companies in the program, but this provision was not in the final Senate amendment.[166] On October 9, House conferees accepted the Interior appropriations bill with the Senate-passed steel loan guarantee provision, and the bill was signed into law as P.L. 107-63.[167]

The LTV situation was not alleviated by this legislation. The steelmaker was in the process of negotiating a $250 million loan with its bankers and the Steel Loan Board, when the prospects of the industry suddenly worsened after the September 11 terrorist attacks and the further downturn in the economic situation. Negotiations between the company, its creditors, the USWA, the Loan Board and other interested parties, particularly the City of Cleveland, failed ultimately to create a package that lenders and the Loan Board believed that the company was likely to repay. In late November, 2001, LTV's management asked the bankruptcy court for permission to liquidate. LTV was able to agree to leave its blast furnaces on "hot idle" status, making them less expensive to restart, and, as mentioned above, the company agreed to continue to pay benefits for employees and retirees on a temporary provisional basis, while the liquidation proceeds. Congress was pressed to take measures to stave off the company's liquidation and termination of worker and retiree benefits.[168] As discussed earlier, however, LTV was liquidated at the end of February 2002. The firm acquiring its assets intends to restart some of the steelmaking capacity, but the lost health care benefits of retirees have not been addressed.

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[166]*Congressional Record*, July 12, 2001, pp. S7559-60, S7566; see also *Congress Daily PM*, "Senate GOP Refusing to Agree to Approps Time Limits," July 17, 2001; and, *Inside U.S. Trade*, "Senate Approves Steel Program with Better Loan Terms for Companies," July 20, 2001.

[167]*AMM*, October 12, 2001. See House Report 107-234, Section 336.

[168]Details on the LTV Chapter 7 bankruptcy are in *AMM*, Nov. 26 and 29, Dec. 4,5,10,14, 18,20 and 21, 2001; *The Economist*, January 5, 2002.

The crisis over LTV's closure stimulated a number of other legislative initiatives, including the H.R. 808 discharge petition discussed above. On November 28, 2001, Rep. Visclosky attempted to add an amendment to the FY 2002 Defense appropriations bill that would have established a three-year, $2.4 billion government entitlement program for steel companies seeking to cover retiree health care obligations. He was supported on the floor by a number of other Members, but his amendment was ruled out of order and he withdrew it.[169] On December 6, 2001, Representative Steven LaTourette introduced H.R. 3428, with three co-sponsors, a bill that would allow the Steel Loan Guarantee Board to waive the requirement that a borrowing company must have good prospects for paying back guaranteed loans, provided that a number of other conditions were met. There was no further action on this bill by the end of the session.

On the Senate side, at the very end of the session, Senator Wellstone and six co-sponsors introduced a different steel loan guarantee reform measure, S. 1884. This bill would require a "fair likelihood" that prospective industry borrowers would repay loans, but would mitigate the requirement by allowing forecasts to "assume vigorous and timely enforcement of our trade laws and general prosperity in the economy..." The bill also raises the limit on a loan to any one company to $350 million and increases the maximum share of a loan that can be guaranteed to 95% in all cases. There is also a House version of this bill (H.R. 3559), introduced by Representative Visclosky.

Trade Adjustment Assistance

Workers whose positions were eliminated because of the impact of direct trade competition are eligible for additional unemployment compensation and retraining assistance through Trade Adjustment Assistance (TAA), a program administered by the Department of Labor. In addition, firms that have been negatively affected by trade are also eligible for technical assistance in adjusting to the new competitive circumstances, in a small program administered by the Commerce Department, primarily through regional Trade Adjustment Assistance Centers.

Hufbauer and Goodrich in particular are strong supporters of using an enhanced form of TAA to address the trade impact issue affecting distressed U.S. industries such as steel. Their analysis finds that coverage of legacy costs through enhanced TAA and existing Pension Benefit Guaranty Corporation programs over a ten-year period would cost the U.S. economy only one-tenth of the cost to steel consumers of a high level of protectionism through a new program of import quotas. They calculated in 2001 that this payment would come in the form of a direct federal outlay of $170-360 million annually.[170] Otherwise, they say, the steel industry may be protected through an import quota system, in which the cost of adjustment would be borne mostly by private sector steel users, at some economic disadvantage to

[169] *Congressional Record* (Nov. 28, 2001), pp. H8519-23; *AMM*, November 30, 2001

[170] In their subsequent report, *Grand Bargain*, they raise this estimate to $500 million, in conjunction with other measures to cover legacy cost problems.

themselves and, it is assumed, the economy as a whole.[171] Moreover, Hufbauer and Goodrich calculate that average steelworker pay and benefits are worth $72,000 per year, a figure substantially higher than in many other industries. And this makes the loss of a steel mill job an economically catastrophic event for most steelworkers; 39% are not re-employed elsewhere, and 50% of those who do gain new jobs report earnings losses greater than 30%.[172]

The authorization for TAA programs was set to expire on Sept. 30, 2001. TAA was renewed for the short term several times by a series of continuing resolutions, but no longer-term reauthorization was agreed by the two Houses of Congress before the first session ended. Consequently, legislative authority for operation of the program expired on January 10, 2002. Congress has passed appropriations legislation that funds TAA assistance in FY 2002, however, and the Department of Labor has advised states that they should continue payment of benefits pending a future reauthorization.[173]

On October 5, 2001, the House Ways and Means Committee approved by voice vote a simple renewal of the present TAA statute through the end of FY 2003 (H.R. 3008). The Ways and Means Committee action avoided a more thoroughgoing re-examination and reform of the TAA program. In response to complaints in the committee regarding the short notice given for the reauthorization bill, Chairman William Thomas stated that the action was "the beginning, not the end" of congressional debate on TAA renewal.[174] Subsequently, when the full House passed H.R. 3008 on December 6, 2001, immediately before the vote on authorizing presidential trade promotion authority, the bill was amended to add 26 weeks of benefit payments and 26 more weeks for those in need of remedial education. The Senate Finance Committee included TAA reauthorization as part of its revision of the post-September 11 economic stimulus package (H.R. 3090), but there was no final congressional action on this measure in the First Session.[175]

Senator Jeff Bingaman introduced on July 19, 2001 a TAA bill (S. 1209) that would significantly expand the programs. The measure would allow the President or either of the congressional trade committees to initiate industry-wide certification for TAA relief, and also require the Labor Department to initiate such a process

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[171] Hufbauer and Goodrich, *Steel: Big Problems*, pp. 10-13.

[172] *Ibid.*, p. 10; in *Grand Bargain*, their later study, they elaborate on this approach with a $3 billion, five-year proposal covering increased worker unemployment insurance costs as well as industry legacy costs, to be partly funded by a 5% "revenue tariff," instead of a much higher protective tariff; see pp. 10-11.

[173] See CRS electronic trade briefing book sections, *Trade Adjustment Assistance for Workers* [http://www.congress.gov/brbk/html/ebtra85] by Paul Graney and Celinda Franco, and *Trade Adjustment Assistance for Firms*, [http://www.congress.gov/brbk/html/ebtra57], by J.F. Hornbeck; see also statement of Sen. Max Baucus, *Congressional Record* (December 20, 2001), p. S13932.

[174] *DER*, "House Panel OKs Renewal of TAA Program, Extension Measure for GSP Duty-Free Relief," October 9, 2001.

[175] CRS ebtra85, p. 2.

concomitant with the start of ITC investigations. Maximum income support under TAA would be expanded from 52 to 78 weeks, and version of the bill approved by the Finance Committee would make the government responsible for 75% of the cost to an individual for continuing employer-provided healthcare coverage after loss of a job (so-called "COBRA" participation). S. 1209 is not industry-specific, but Senators from steel-producing states and union representatives have supported it, because of its relevance to the steel industry legacy cost issue, as well as the prospect of large-scale industry closings and bankruptcies.[176] Representatives Ken Bentsen and Anna Eshoo introduced a companion bill in the House on November 29, 2001 (H.R. 3359).

For its part, the Department of Labor on behalf of the Bush Administration proposed to reform TAA by combining the general program with NAFTA-TAAP, the special adjustment assistance program for those who lose their jobs because of NAFTA-based competition. The Labor Department draft also included tighter rules on waiving the retraining participation requirement, and proposed a pilot program that would allow workers to choose a $5,000 trade adjustment account in lieu of training and income support provided under the regular program.[177] The issue of TAA reauthorization and reform has been closely related to the issue in the Senate of approving legislation to grant the President trade promotion authority (TPA, also known as "fast-track" authority).[178]

After several weeks of negotiation on the terms of expanding TAA benefits to include health care coverage, Sen. Daschle on May 1, 2002, introduced an amendment to the combined Trade-TAA bill under discussion on the Senate floor (H.R. 3009). The amendment included a health care benefit, through which the federal government would pay for 73% of COBRA continuation health care costs for beneficiaries through an "advanceable" refundable tax credit. The amendment also established eligibility for steelworker retirees who have recently lost their health care benefits by allowing them to join state "pools" set up for workers who also have no health care coverage. The amendment stated, in defining an "eligible worker:"

> Such term includes an individual not [previously] described...who would have been eligible to be certified as an eligible retiree or eligible beneficiary for purposes of participating in the Steel Industry Retiree Benefits Protection program under the Trade Act of 1974, as amended by S.2189, as introduced on April 17, 2002.

Sen. Rockefeller was quoted as stating that the provision was "just a bridge" for one year at a cost of "$300 million to $400 million" intended to help 125,000 people

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[176] *AMM*, July 23, 2001. A complete analysis of contending approaches to TAA reauthorization and reform is in the CRS report *Trade Adjustment Assistance for Workers: Legislation in the 107th Congress* (RS 21078), by Paul J. Graney (updated Apr. 19, 2002).

[177] *DER*, "DOL Proposes New Program to Aid Workers Who Lose Their Jobs to Trade" (January 10, 2002).

[178] *Inside U.S. Trade*, "Senate Democrats Move to Bring Fast Track to Floor Next Week," (April 19, 2002).

from LTV and other companies who have lost health insurance coverage during the recent steel industry downturn.[179]

There was a strong and negative Republican-led response to Sen. Daschle's introduction of an amendment without bipartisan agreement, and particularly to the inclusion of the steel retirees provision, which had not been previously been discussed in the context of this legislation. The Bush Administration formally opposed the Daschle Amendment's TAA provisions. It held that they were "very costly, increasing the size of the programs by at least 300 to 400 percent...Specifically, the Administration opposes the Daschle Substitute's last minute addition of health assistance for steel retirees [that] could potentially cost more than $800 million per year – almost twice the cost of the current programs."[180] Bethlehem Steel and U.S. Steel indicated that the amendment would not appear to resolve their problems. The SMA indicated, however, that it would not oppose this amendment, if, in its final form, it was limited to short-term assistance for retirees who have lost health care benefits and if no payments were made to operating steel companies.[181]

On May 9, 2002, the chair and ranking member of the Finance Committee, Senators Max Baucus and Charles Grassley, announced agreement on a substitute amendment that dropped the steel retiree coverage from the bill altogether, while reducing the subsidy for COBRA coverage for unemployed workers under TAA to 70% and altering how it would be administered.[182] A motion to close debate on H.R. 3009 and move to final consideration based on this version of TAA reauthorization was approved by 68-29 on May 21. On May 23, 2002, the Senate gave final approval to the H.R. 3009 by a vote of 66-30. Many differences exist between the Senate bill and the House versions of both trade promotion authority legislation and TAA reauthorization.[183]

Supporters of health care cost relief for retired steelworkers attempted to restore the steel retirees' relief provision during the debate on trade legislation through a separate amendment. A reworked version of the Rockefeller amendment to the TAA provisions was reintroduced, but failed when the Senate refused to close debate on the measure by four votes (56-40) on May 21. As discussed in the floor debate, the Congressional Budget Office's estimate of the cost of this measure was $179 million for the one year relief sought by supporters for LTV retirees and others who had lost

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[179]*DER*, "Democrats, Republicans Remain at Odds on Health Items in Trade Bill; Talks Continue" (May 3, 2002).

[180]Executive Office of the President. Office of Management and Budget. *Statement of Administration Policy: H.R. 3009 – Andean Trade Preference Expansion Act*, (May 8, 2002), p. 3.

[181]See for example, *AMM* (May 6, 2002).

[182]*DER*, "Trade Adjustment Assistance Measure Includes 70 Percent Health Care Subsidy" (May 10, 2002).

[183]*Inside U.S. Trade*, "Senate Approves Cloture Motion on Trade Package" (May 22, 2002); *DER*, "Senate Approves TPA Measure, But Difficult Conference Expected" (May 24, 2002); *Washington Post* (May 24, 2002).

their health care coverage through steel industry bankruptcies. Majority Leader Daschle said, "It was a powerful message because we have 56 Senators on record to say that this fight goes on. Ultimately we will win this fight. Steelworkers will get help. This is just the beginning."[184]

The Outlook for U.S. Policy on Steel

Congress gave President Bush the lead in resolving steel trade issues, after the President decided to launch a Section 201 trade case. President Bush's Section 201 trade remedies, announced on March 5, 2002, essentially kept the initiative in his hands. While the measures taken by the President have engendered a strong international reaction, both the ITC and the Administration have sought to act within WTO rules, especially the Agreement on Safeguards. These actions are being challenged under WTO rules, and the challenges may yet be successful. But by taking a remedy action that went some way to meeting industry demands under Section 201, the President appears to have so far obviated separate actions in Congress that would have required measures that would change current U.S. trade law or may have contravened U.S. international obligations.

It has been suggested that the President, as a self-proclaimed supporter of the WTO-based international trading system, may be seeking through the Section 201 process to show that his Administration can provide relief to the steel industry under WTO rules. The Administration has established remedies that it believes conform to WTO rules, and provide real and effective industry relief, but do not seriously impair the competitiveness of domestic steel users. Hence, the remedy measures include high levels of temporary tariffs on a wide range of products, but the Administration is also including in its program a multitude of specific product exclusions. In the terms used in a recent political cartoon, the President may wish to show both that he can act to defend vigorously "free markets," while also proving that he is a "man of steel."

Impact on International Negotiations. Now that President Bush has decided to take action to implement broad trade remedies, the question is whether such steps can be blended into a multilateral approach to global overcapacity and other steel industry issues, or whether they are written off as a unilateral and protectionist U.S. response to help its industry. Although U.S. policies on steel have been partly overturned already by WTO rulings on AD/CVD cases and are increasingly under challenge from U.S. trading partners, these actions to date are in the nature of preliminary skirmishes – even though respondents in the Section 201 case have testified that AD/CVD actions have already led to a big drop in imports. The big decisions on consistency of U.S. actions with WTO rules are yet to be made. Meanwhile, the initial reaction of other major trading partners has been negative, but

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[184]Senate Amendment 3433 to H.R. 3009, introduced by Sen. Rockefeller and others, *Congressional Record*, (May 16, 2002) S4505-6; (May 21, 2002) S4581-91; *Roll Call Daily*, May 21, 2002; *Inside U.S. Trade*, "Steel TPA Amendment Fails on Procedure, Withdrawn by Sponsors" (May 21, 2002).

the OECD capacity reduction and steel trade discipline discussions have not been terminated.

Impact on Domestic Industry. Much of the U.S. steel industry remains financially troubled, although the recent closure of some domestic capacity through financial distress, a substantial rise in prices in early 2002 and Section 201 trade relief all promise some help. This help may be too little or too late to rescue the most seriously affected operations. Conversely, higher domestic steel prices, if they result from trade remedy action, could have adverse competitive consequences for industries that use steel. This could delay or derail the consuming industries' recovery from the recent period of slower economic growth, or even drive some of them offshore. Also, as many Section 201 respondents, independent observers and even some parts of the steel industry have noted, saving or resuscitating parts of the domestic steel industry that are presently troubled may also have the adverse effect of delaying long-term industry restructuring required to insure competitiveness.

Outlook for Action in Congress. Congress so far has essentially refrained from short-term industry relief measures, while the Section 201 case and international negotiations have moved along. While the 2000 Byrd Amendment dumping and subsidy offset law has been challenged in the WTO, the actual payout has been very limited and Congress has not expanded the measure. The steel loan guarantee program was strengthened, but it was not successfully utilized, for example, to address the LTV liquidation crisis in late 2001. The main scope for legislative action in the closing months of the 107th Congress would appear to be in the effort to address legacy cost issues. S. 2189, H.R. 4574 and H.R. 4646, all introduced in April-May 2002, represent serious efforts to tackle this problem. But the measures have not been broadly endorsed by the steel industry or by the Bush Administration. Moreover, the Bush Administration opposed the effort to add steel legacy cost relief to the TAA provisions being considered in conjunction with the trade promotion authority legislation in the Senate. And one of the funding measures in these bills is the use of Section 201 remedy tariffs to pay for legacy costs, an approach that may raise objections in the WTO. The scope or time for Congress to take decisive action on this problem is both limited and diminishing.

For Additional Reading

CRS Report RL30461, *Trade Remedy Law Reform in the 107th Congress*, by William H. Cooper.

CRS Trade Briefing Book, *Section 201 of the Trade Act of 1974*, by Jeanne J. Grimmett [http://www.congress.gov/brbk/html/ebtra68].