Order Code RL31279

Report for Congress

Steel: Legacy Cost Issue

Updated May 29, 2002

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Summary

The question of "legacy costs" has emerged as a key issue in the debate over efforts to aid the American steel industry. Such costs may be defined as pension and health care benefit provisions of contracts covering steel workers and retirees that are funded by the earnings of steelmaking companies. As many of these companies have faced bankruptcy in recent years, and some are moving into liquidation, current and former steel company employees face the loss of benefits. According to the United Steelworkers union, a total of 600,000 retirees could lose their health care coverage altogether, for example, and total unfunded liability costs may be $13 billion or higher.

Now that President Bush has acted to establish temporary remedy relief for the domestic steel industry under Section 201 of U.S. trade law, the union and many legislators have said that resolution of the legacy cost issue is the next critical step in restoring the domestic steel industry to full competitiveness. But, while the Bush Section 201 decision was widely praised by the steel industry, no support has coalesced in a similar way among private sector industry and union representatives, and between legislators and the executive branch, on legacy cost assistance.

H.R. 808 (S. 957) was introduced in 2001 and deals comprehensively with this issue. To some extent, it has been rendered moot by President Bush's Section 201 remedies. It combines legislatively mandated steel import trade restrictions, a tax on steel to pay for legacy costs through a government-managed system, and other proposals. H.R. 808 is co-sponsored by 228 House Members and has been endorsed by the United Steelworkers union, though not by steel companies and trade associations. On April 17, 2002, Sens. Rockefeller, Specter and seven other senators introduced S. 2189, which focuses solely on steel retiree legacy health care costs. On May 1, the Majority Leader, Sen. Daschle, incorporated the eligibility provisions of S. 2189 to add steelworker retirees as beneficiaries of new health care provisions in Trade Adjustment Assistance Act reauthorization within the Trade Promotion Authority bill (H.R. 3009), though this provision was dropped in a substitute amendment. An effort was made on May 21 to add a version of the steelworker retiree relief provision as a separate amendment to H.R. 3009. It received 56 votes, not enough to invoke cloture on debate, and was withdrawn.

Two bills have also been recently introduced on the House side. Rep. Phil English and a group of Republican co-sponsors introduced steel legacy cost legislation on April 24, 2002 (H.R. 4574). Rep. John Dingell and 95 co-sponsors introduced a different legacy cost relief bill on May 2, 2002 (H.R. 4646).

These legislative proposals, and other legislation that addresses the steel legacy cost issue are discussed in the report. This report is based on CRS Report RL31107, *Steel Industry and Trade Issues*, a more comprehensive report dealing with all aspects of the steel issues currently before Congress. This report will be updated as developments warrant.

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Steel: Legacy Cost Issue

Introduction

The question of "legacy costs" has emerged as a key issue amid efforts to improve the financial health of the U.S. steel industry. Legacy costs may be defined as pension and health care benefit provisions of steel worker contracts, especially for retirees, which provide benefits above and beyond related public entitlements and which are funded by earnings of steel companies. These benefits were negotiated, especially at unionized integrated steel companies, to encourage workers to accept workforce downsizing and productivity improvements that were deemed necessary to keep these companies competitive. Now many of these companies are in bankruptcy and some are being liquidated, leaving retirees and employees facing loss of benefits. Acquiring companies may be interested in maintaining existing operations on an ongoing basis, but likely would have no interest in assuming responsibility for the pension and health care benefits of large numbers of retirees. Legislative proposals are being considered 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.

This report describes the issue, with some statistical data included. It indicates how the issue is addressed in the steel industry consolidation proposal put forward in December 2001 by the U.S. Steel Corporation, and reviews legislative proposals that address legacy costs.[1]

Why Are Legacy Costs Important?

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 at that time were U.S. Steel, Bethlehem Steel, LTV Steel, and AK Steel, which together accounted for 63% of total unfunded liabilities.[2] By production tonnage, these were the four largest integrated steel companies in the United States, with integrated companies

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[1] This report is in part drawn from the CRS Report RL31107, *Steel Industry and Trade Issues*, by the same author. The longer report discusses steel industry issues in more detail.

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

accounting for half of U.S. raw steel output.[3] Bethlehem and LTV are now in bankruptcy, and the latter is in liquidation.

For the major integrated producers, the USWA reported in May 2001 that total retiree health care and pension benefit costs amounted 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.[4] 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.[5] In more recent Senate testimony, Gerard also estimated that 700,000 active steel workers and dependents are covered by steel industry health care plans.[6]

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").[7] 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.[8] 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. 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

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[3] For a list of the largest U.S. steelmakers, see *American Metal Market* (*AMM*) Mar.11,2002.

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

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

[6] U.S. Senate. Committee on Health, Education, Labor and Pensions. Hearing on the Future of American Steel, March 14, 2002. Testimony of Leo W. Gerard, p. 3.

[7] 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.

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

leave the organization in the red, though it may questionable how many more such transactions the fund can sustain.[9]

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.[10] 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 has shifted 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 the 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.[11]

Legacy Costs in 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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[9] 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).

[10] USWA. *Domestic Steelmakers: Retiree Health Care Legacy Costs*. no date. *Ibid.*, *The Steel Crisis and Retiree Health Care* (March 8, 2002) asserts that 250,000 employees and dependents are covered by health plans of steel companies now in bankruptcy.

[11] Letter of Senate Steel Caucus to President George W. Bush, February 8, 2002; for details on the Section 201 presidential decision, see Stephen Cooney, *Steel Industry Issues and the Section 201 Trade Case* (CRS electronic trade briefing book EBTRA126) and CRS Report RS21152, *Steel: Key Issues for Congress*, p. 3.

> highly fragmented industry. Third, it requires a progressive new labor agreement that would provide for meaningful reductions in operating costs.[12]

The plan essentially called 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, "Arcelor."[13] 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.[14] 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."[15]

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.[16] 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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[12] 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.

[13] *AMM*, December 13, 2001.

[14] *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.

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

[16] *DER*, "U.S. Steel Companies Eye Consolidation for Industry, Government Aid for Retirees" (Dec. 5, 2001); *New York Times*, Dec. 5, 2001; *Inside US 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.[17] 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.[18]

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.[19] 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.[20]

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."[21] Nor has the idea of government financial support for industry consolidation been enthusiastically received outside the steel industry.[22]

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

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

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

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

[21] 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 US 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.

[22] 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."[23]

This "common action plan" was not directly translated into a legislative proposal, nor did other industry stakeholders respond.[24] 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.

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.[25] These legislative developments will be analyzed in detail in the last section of the report. Similar legislation was proposed in the House.

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

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[23] 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.

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

[25] *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.

minimills, who have had a different set of labor contracts, didn't want that."[26] 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.[27]

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.[28] 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.[29]

Legacy Cost Proposals in Legislation

Some of the possible ways in which legacy costs might be covered or addressed legislatively have appeared in the following proposals.

Legacy Costs in the Steel Revitalization Act (H.R. 808/S. 957)

Introduced by Representatives Visclosky and Quinn, H.R. 808 is a comprehensive measure addressing the issues that affect the steel industry. The bill had 228 House co-sponsors by March 2002. A companion bill has been introduced in the Senate (S. 957), by Senator Paul Wellstone and three co-sponsors. The legacy cost provision is also a separate title in S. 910, introduced by Senator Jay Rockefeller.

Title II of this bill 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. This provision reflects an assessment that the financially troubled domestic steel industry can no longer meet the health care commitments that were made in exchange for labor's acceptance of earlier downsizing agreements. The bill 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 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/S. 957. It takes the position that a tax on steel sales is appropriate to

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[26] Press Briefing by U.S. Trade Representative Robert Zoellick (March 5, 2002), http://www.whitehouse.gov/news/releases/2002/03/20020305-13.

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

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

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

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 have not, at present, expressed formal support for this provision. Moreover, as noted earlier, the minimills, in particular, are actively opposed to the approach of H.R. 808. The Steel Manufacturers Association has taken the position that "government assistance to troubled steel companies for continued operation or legacy costs is unacceptable. That assistance is unfair to those steel companies who are not troubled."[30]

Efforts were made to address this issue in the post-September 11 economic stimulus package (H.R. 3090). Rep. Visclosky sought at the Rules Committee stage to have a version of Title II included for consideration as a floor amendment to H.R. 3090. Earlier, Rep. 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; supporters also tried to add this provision to H.R. 3090.[31] Neither provision was included in H.R. 3090, when it passed the House on October 24, 2001. Later, after LTV moved to liquidate under Chapter 7 of the bankruptcy code in December 2001, Rep. Dennis Kucinich initiated a discharge petition for H.R. 808, and has gained 123 signatures; it would take a majority (218 signatures) to force a floor vote on the bill.

Senate Steel Legacy Cost Bill (S. 2189)

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 Jay Rockefeller, co-chair of the Senate Steel Caucus, introduced S. 2189 on behalf of himself, his co-chair (Senator Specter), the Majority Leader (Senator 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."[32]

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"

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

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

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

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, which includes a prescription drug benefit, 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;
- 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."[33] 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."[34] S. 2189 was referred to the Finance Committee.

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

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

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 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.[35]

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.

There is presently no consensus among industry stakeholders behind these legacy cost relief bills. The largest integrated steel producer, U.S. Steel, supports the English bill (H.R. 4574), but not the Dingell bill (H.R. 4646). Under the latter proposal U.S. Steel, currently a solvent company, would need consensus acceptance of labor before it could discharge its retiree health care responsibilities to the federal program. Failing union support for such a "qualified election" of the federal plan, U.S. Steel feels it would become significantly disadvantaged against other domestic producers. Bethlehem Steel, the largest steelmaker now in Chapter 11 bankruptcy, supports Dingell (H.R. 4646), but opposes H.R. 4574. The English bill limits legacy cost relief to "domestic" companies that acquire assets of American steel companies, but Bethlehem is currently in joint-venture negotiations with foreign-owned companies. Like Bethlehem, the USWA supports H.R. 4646, and not H.R. 4574. The SMA opposes both House bills.[36]

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

[36] *AMM*, May 3 and 6, 2002.

Keeping Companies in Business Using the Emergency Steel Loan Guarantee Program

This program, first established in P.L. 106-51, was designed to guarantee loans for restructuring and modernizing steel companies that were financially distressed following the 1997-98 import surge and industry financial crisis. In practice, the loan guarantee program has not played a major role in alleviating the latest industry problems. Only one guarantee was issued, for a loan of $110 million, that a company has subsequently been able to take up. In particular, the fixed deadline of December 31, 2005, for loan maturities decreased the attractiveness of the guarantees to would-be lenders and investors.[37] 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.

LTV 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 worsening economic downturn. Negotiations between the company, its creditors, the USWA, the Loan Board, and other interested parties (particularly the City of Cleveland) failed to create a package that lenders and the Steel Loan Board believed that the company was likely to repay. 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 agreed to continue to pay benefits for employees and retirees on a temporary provisional basis while the liquidation proceeds. At the end of the First Session in 2001, representatives of LTV's workers pressed Congress to take measures to stave off the company's liquidation and termination of worker and retiree benefits.[38]

LTV's closure stimulated a number of legislative initiatives, besides the H.R. 808 discharge petition mentioned 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. Visclosky was supported on the floor by a number of other Members, but his amendment was ruled out of order and he withdrew it.[39] On December 6, 2001, Rep. Steven LaTourette, with three co-sponsors, introduced H.R. 3428, a bill that would allow the Steel Loan Guarantee Board to waive the requirement that a borrowing company must have good

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[37] 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).

[38] 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.

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

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 First Session, Sen. Wellstone and six co-sponsors introduced a different steel loan guarantee reform measure, S. 1884. This bill would still require a "fair likelihood" that prospective industry borrowers 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 loan limit to any one company from $250 million to $350 million, and increases the maximum share of a loan that can be guaranteed from the present 85% in most cases to 95% in all cases. A House companion bill (H.R. 3559) has also been introduced. No legislation has been approved early in the Second Session relevant to this issue.

Paying Legacy Costs with Antidumping/Subsidy Offsets

The Continued Dumping and Subsidy Offset Act (CDSOA) was signed into law in October 2000. The CDSOA is commonly known as the "Byrd Amendment," because the then ranking member of the Senate Appropriations Committee succeeded in adding it to the FY 2001 Agriculture appropriations bill (P.L. 106-387).[40] 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. 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. Only companies still operating in the affected industries, including operations that may have been acquired by new owners, are eligible for the offset payments.[41]

This law has proven both controversial and of limited value in the context of levels of legacy cost liabilities in the steel industry that have been discussed above. A total of $207 million was disbursed from this account in December 2001 to more than 140 U.S. companies – about half of them steel mills and iron foundries. But individual totals for steel companies were relatively small: the largest reported payouts to steel companies were about $4 million each to Bethlehem Steel and the Armco unit of AK Steel. The largest single payouts under the program were for $62 million to Torrington and $31 million to Timken Co., two ball bearing manufacturers.[42]

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[40] See CRS Report RL30461, *Trade Law Reform in the 107th Congress*, pp. 7-8.

[41] *Federal Register*, June 26, 2001, pp. 33920-26 and August 3, 2001, pp. 40782-40800.

[42] *AMM*, December 17, 2001; *DER*, "Customs Processes Over $200 Million for Disbursement Under Byrd Amendment," December 4, 2001. The complete disbursement list, by company and state, is Department of the Treasury. U.S. Customs Service. *CDSOA FY2001 Disbursements by Claimant* (January 22, 2002).

Meanwhile, U.S. trading partners believe that use of penalty tariffs to subsidize a competing domestic industry, as under the Byrd Amendment, contravenes World Trade Organization (WTO) rules. The European Union, Japan, Canada, and eight other U.S. trading partners have initiated a WTO case against the Byrd Amendment. Oral arguments were presented in February 2002, before a WTO dispute settlement panel.[43] A ruling is now due by July 2002.

Addressing Legacy Costs in Trade Adjustment Assistance and Trade Legislation

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.

The authorization for these programs expired January 10, 2002, though the programs continue to be administered, as Congress did pass appropriations legislation that funds TAA assistance in FY 2002. The Department of Labor has advised states that they should continue payment of benefits pending a future reauthorization.[44] President Bush has proposed reauthorization of TAA and a funding increase as part of his FY 2003 budget.[45]

The House passed reauthorization legislation (H.R. 3008) on December 6, 2001, immediately before the vote on authorizing presidential trade promotion authority. The bill reauthorizes TAA through FY 2003. It also adds 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.[46] The final version of the stimulus passed in March 2002 and signed into law contained no provisions relative to TAA.

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[43] *Inside US 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," November 29, 2001; *ibid.*, "WTO Members Outline Case Against Byrd Amendment; First Hearing Set for February," December 10, 2001.

[44] 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.

[45] CRS ebtra85, p.2.

[46] *Ibid*.

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 concomitant with the start of ITC investigations. Maximum income support under TAA, in S. 1209 as marked up in the Senate Finance Committee, would be expanded from 52 to 78 weeks, and the government would pick up 75% of the cost to an individual for continuing employer-provided health care coverage after loss of a job (COBRA participation) through a refundable tax credit. 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. Republican members of the Finance Committee have opposed S. 1209 on a number of specific grounds, although they do not oppose the general concept of addressing health care coverage issues in TAA.[47] Reps. Ken Bentsen and Anna Eshoo introduced a companion bill in the House on November 29, 2001 (the latest version, revised to reflect the Senate Finance Committee markup, is H.R. 3670).[48]

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.[49]

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.

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[47] *AMM*, July 23, 2001. On Finance Committee Republicans' position, see dissenting views in Senate Committee Report 107-134 (Feb. 4, 2002).

[48] See "dear colleague" letter authored by Reps. Bentsen and Eshoo (Feb. 1, 2002).

[49] *DER*, "DOL Proposes New Program to Aid Workers Who Lose Their Jobs to Trade" (January 10, 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 from LTV and other companies who have lost health insurance coverage during the recent steel industry downturn.[50]

There was a strong and negative Republican-led response in the Senate 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 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."[51] Bethlehem Steel and U.S. Steel have indicated that the amendment, while somewhat confusing in its drafting, would not appear to resolve their problems. The SMA indicated 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.[52]

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.[53] 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 H.R. 3009 by a vote of 66-30.[54]

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 based on the earlier Rockefeller provision. Relief was limited to only those retirees who lost their health care coverage through "qualified closures" under S. 2189 and would be specifically for a one-year period.[55] A USWA fact sheet

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

[51] 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.

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

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

[54] *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).

[55] Senate Amendment 3433 to H.R. 3009, introduced by Sen. Rockefeller and others, (continued...)

noted that there would be 102,000 total estimated currently eligible retirees.[56] A Congressional Budget Office of the total cost of this relief was $179 million. The amendment failed when the Senate refused to close debate on the measure by four votes (56-40) on May 21. 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."[57]

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[55] (...continued)
Congressional Record (May 16, 2002), S4505-6

[56] USWA. *Steel Retiree Health Care: Facts from the United Steelworkers of America* (May 17, 2002), attached table.

[57] *Congressional Record* (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).