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Steel: Legislative and Oversight 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 have gone into bankruptcy and many workers have lost their jobs. Many retirees have lost company-funded health care benefits, while their pensions are being taken over by the federally chartered Pension Benefit Guaranty Corporation. The condition of the industry is discussed in detail in CRS Report RL31748, *The American Steel Industry: A Changing Profile*.

U.S. policymakers responded with a variety of measures. The House of Representatives in 1999 approved a bill that would have required the President to roll back imports, and the Clinton Administration reacted with a more aggressive steel policy. The 106th Congress approved and President Clinton signed laws to establish a steel loan guarantee program (P.L. 106-51), and to distribute to petitioners duties collected from AD/CVD cases, (known as the Byrd Amendment to the Agriculture appropriations bill, P.L. 106-387). These measures did not prevent a new downturn in the domestic steel industry. Moreover, the World Trade Organization (WTO) has found that the Byrd Amendment violates its rules; S. 1299 has been introduced to repeal this law, and to distribute AD/CV duties instead to a new program for communities negatively impacted by trade. The Bush Administration in its FY2004 budget request proposed elimination of both programs, but both continue to operate. The Steel Loan Guarantee program expires this year, though H.R. 2881 has been introduced to extend it through 2005.

President Bush in June 2001 requested that the U.S. International Trade Commission (ITC) undertake a broad Section 201 trade investigation on the steel industry, and on March 5, 2002, imposed three-year safeguard tariffs with top rates of 30% (discussed in detail in CRS Report RL31842, *Steel: Section 201 Safeguard Action and International Negotiations*). U.S. trading partners are challenging the safeguard tariffs and other U.S. steel policy measures under WTO rules (see CRS Report RL31474, *Steel and the WTO*). Also, a provision in the 2002 Trade Act (P.L. 107-210) assists retirees not eligible for Medicare, who have lost their health care benefits because of corporate bankruptcies. H.R. 1999 and S. 1018, introduced in the 108th Congress, would broaden eligibility for these benefits and extend to 2010 the steel import licensing and monitoring program established under Section 201. Another bill, H.R. 2365, would change U.S. trade laws to strengthen the position of domestic industry petitioners for relief from imports.

Some Members of Congress, economists and representatives of steel consuming industries believe that the steel safeguard tariffs are damaging the competitiveness of U.S. industry. House Ways and Means Committee Chairman William Thomas on March 18, 2003, requested that the ITC conduct such an investigation under Section 332 of U.S. trade law. This report will be issued together with the ITC's mid-point report on the domestic steel industry, which is required under Section 201.

This CRS report examines recent legislative measures addressing issues in the steel industry in the 108th Congress. It will be updated as events warrant.

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Congressional Response to Section 201 Steel Safeguard Tariffs

The U.S. steel industry has been in serious difficulties since the late 1990s (the causes and impact of these problems are explored in CRS Report RL31748, *The American Steel Industry: A Changing Profile*). In recent years, Congress has actively considered and acted on measures designed to assist the industry. The industry's economic situation and future, however, remain generally uncertain.

Members of Congress, as well as industry and union representatives, urged President George W. Bush to protect the steel industry with safeguard measures under Section 201 of the Trade Act of 1974. The two major types of domestic raw steel producers – “integrated” steel mills, which start by making steel from iron ore, and “minimills,” which generally make a narrower range of products by remelting steel scrap – both broadly supported safeguard actions under Section 201. As detailed in CRS Report RL31748, the integrated mills and the minimills both believe that steel prices have been kept too low and that their ability to invest and modernize has been impaired by a high rate of imports, which has resulted from global overcapacity. But on other issues, particularly with respect to assistance to the industry in paying for pension and health care commitments, the minimills and the integrated mills have quite different perspectives on resolving industry problems.

After the President decided to launch a Section 201 trade case, Congress essentially gave President Bush the lead in addressing steel industry trade issues. President Bush's Section 201 trade actions, announced on March 5, 2002, have kept this initiative in his hands. But Congress has remained active in considering the impact of these actions, as well as additional issues, notably legacy costs, defined as the pension and health care benefits paid by steel companies.

Congressional Role in Section 201 Process

Sections 201-204 of the Trade Act of 1974, commonly referred to as “Section 201,” permit the President to grant temporary relief, usually “safeguard” tariffs or quotas, to domestic industries that are found to be seriously injured by an increase in imports of articles like or directly competitive with products produced by those industries. Representatives of affected industries may petition the U.S. International Trade Commission (ITC) for assistance, and the Commission is required to investigate whether the increase in imports is causing or is likely to cause serious injury to the industry involved. Investigations may also be initiated by resolution of the House Ways and Means Committee or the Senate Finance Committee, or may be requested by the President or the U.S. Trade Representative (USTR). After the

investigation, the ITC then determines whether action is warranted and, if so, recommends to the President various forms of import relief.¹

Congress played an active role before, during and after the Section 201 process by which the present steel safeguard tariffs were established. On June 5, 2001, responding to many requests from Congress, union representatives and steel companies, President George W. 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 President also announced that he would seek multilateral negotiations with U.S. trading partners on fundamental issues of overcapacity and subsidies.²

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 different, 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 Senate Finance.³

The ITC held an extensive series of hearings on the issue of injury to the steel industry from imports, which began on September 17, 2001. The ITC staff had grouped the tariff headings forwarded by the 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”).⁴

Members of Congress may participate in ITC hearings, and many did so. The first witness at the first hearing, testifying in support of relief, was Senator Robert Byrd of West Virginia. He was followed through the course of the hearings by 40 other elected leaders, including members of both parties, both Houses of Congress, and several Governors, who testified in support of relief. In the subsequent ITC hearings on remedies, this perspective was balanced somewhat, as Senator Chuck Hagel of Nebraska and Representative Jim Kolbe of Arizona provided testimony, not against relief, but to remind the ITC of U.S. interests in maintaining adherence to World Trade Organization (WTO) rules and the interests of U.S. consumers. Similarly, Representatives John Isakson and Nathan Deal of Georgia expressed

¹ For details, see CRS Report RL31396, *Section 201 of the Trade Act of 1974: Summary of Provisions and History of Investigations* by George Mangan.

² President George W. Bush. *Statement by the President Regarding a Multilateral Initiative on Steel*. (June 5, 2001), [<http://www.whitehouse.gov/the-press-office/2001/06/05/4.html>]. A detailed discussion of the Section 201 safeguard actions, associated policies and subsequent developments is presented in CRS Report RL31842, *Steel: Section 201 Safeguard Action and International Negotiations* by Stephen Cooney.

³ *American Metal Market (AMM)*, July 18 and 31, 2001. The Finance Committee resolution was forwarded by letter to the chairman of the ITC on July 26, 2001. USITC. “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.

⁴ Quoted phrases from 19 USC §2252 (b)(1)(B).

concern about a constituent, an automotive parts manufacturer, whose business could be adversely affected, 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 governmental representatives also frequently included in their remarks references to the importance of a domestic steel industry to U.S. national security.

The ITC announced on December 7, 2001, its findings that 16 of the 33 product groups under investigation had suffered or were threatened by substantial injury from imports during the period of investigation. Injured domestic producers, the ITC found, included makers of products in all four categories covered by the presidential request: carbon and alloy steel flat, long and tubular products, and stainless steel products.⁵ Subsequently, the ITC made a series of recommendations to the President for remedial actions. These recommendations were not unanimous. Two commissioners recommended four-year tariffs as high as 40% for most products (measured by volume of imports), three commissioners recommended tariffs no higher than half that level, and one commissioner generally preferred quotas instead of tariffs.⁶

On March 5, 2002, the White House announced the President's decision to apply trade remedy measures to 14 of the 16 product groups for which the ITC found injury under the Section 201 process. The President adopted safeguard tariffs of 30% in the first year for high-volume flat and long products, and semi-finished slabs, with a quota for slab imports with no remedy tariffs (a tariff-rate quota). Lower levels of relief were provided for some long products, notably concrete reinforcement bars, and tubular and stainless products. No remedy relief 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, and, as required by U.S. law, the safeguard tariffs are successively lower in the second and third years.⁷

Canada and Mexico, the North American Free Trade Area partners of the United States, are major steel exporters to the United States, but were exempted from all remedy measures. So were the other U.S. free-trade area partners (namely Israel and Jordan, which are not major producers). Imports from most developing countries were also exempted.⁸ The Administration also excluded some steel products from the safeguard tariffs on grounds that they are not available from U.S. producers, and announced that it would undertake a process to review additional possible exclusions, including any objections by U.S. industry to proposed exclusions. Ultimately, the Administration granted more than 700 requests for exclusion of specific imports from the remedy measures. It may add to the list of exclusions in March in each year after

⁵ A summary of the ITC findings on injury is presented in CRS Report RL31842, Table 1.

⁶ The recommendations of the commissioners are summarized in USITC Publication 3479. *Steel: Investigation No. TA-201-73* (Dec. 2001), Vol. I: *Determinations and Views of the Commissioners*, pp. 2-8.

⁷ The Section 201 safeguard tariffs are summarized in CRS Report RL31842, Table 2A.

⁸ Country exemptions from the Section 201 safeguard tariffs are summarized in CRS Report RL31842, Table 2B.

subsequent annual reviews.⁹ The first annual review, completed in March 2003, added 295 specific products to the exclusion list.¹⁰ Members of Congress have been actively involved in expressing their views to the Commerce Department and to the USTR regarding the exclusion of products from steel safeguard remedies.¹¹ Representative William Lipinski and 19 co-sponsors also introduced H.R. 2877 on July 24, 2003, which would allow for the revocation of certain exclusions, when it could be shown that the only basis for denying an objector's claim was its lack of timeliness. Otherwise, the position of the Administration is that exclusions, once granted, will not be revisited.

The Section 201 statute provides that if the President takes no action or action different from the ITC recommendation, the ITC's recommendations may still go into effect instead of presidential action, if Congress enacts a joint resolution of disapproval of the President's decision within 90 days of notification of that decision.¹² Representative William Jefferson, emphasizing the potential damage of the steel safeguard tariffs and falling imports to the Port of New Orleans in his district, introduced a resolution under Section 201 to overturn the President's policy. 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.¹³ The resolution was referred to the House Ways and Means Committee, where it was reported unfavorably on April 24, 2002, and tabled on the House floor on May 8, 2002.¹⁴

ITC Reports on Safeguards under Sections 204 and 332

Complaints from U.S. businesses about high steel prices and short supplies began rolling in as the Section 201 tariffs went into effect and steel prices rose in the first half of 2002. These groups and their congressional supporters succeeded in ensuring that the ITC will report on the impact of the safeguard measures on steel

⁹ President of the United States. *Message to Congress* (House Doc. 107-185), March 6, 2002.

¹⁰ Dept. of Commerce/Office of the USTR. *Fact Sheet: Exclusion of Products from Safeguard on Steel Products and Automatic Adjustment of the Remedy*, March 21, 2003. A summary descriptive list of exclusions, with quotas, was released with these two documents; the full version is included in 68 *Federal Register* 15494-544 (March 31, 2003).

¹¹ Sen. Jay Rockefeller, in testimony before the ITC's Section 204 mid-point review hearing on July 22, 2003, stated that, "the Administration has excluded a staggering 1,022 products from the Section 201 measures. As a result, currently only about a fifth of U.S. steel imports – or roughly 5% of overall U.S. steel consumption – is covered by the tariffs."

¹² CRS Trade Briefing Book, *Section 201 of the Trade Act of 1974*, by Jeanne J. Grimmer [http://www.congress.gov/brbk/html/ebtra68.html].

¹³ BNA. *Daily Executive Report (DER)*, "Rep. Jefferson Announces Challenge to Bush Decision to Impose Tariffs on Steel," March 8, 2002.

¹⁴ *DER*, "House Crushes Move to Overturn Controversial Safeguard Steel Tariffs" (May 9, 2002).

consuming industries, as well as on the steel industry itself, when it issues a report required by law at the mid-point of their three-year planned duration.

Representative Donald Manzullo, Chairman of the Small Business Committee, convened a series of hearings beginning in July 2002, which heard witnesses complain that in the Section 201 tariff decision the steel industry had been favored at the expense of steel users, that steel prices had risen even higher than the nominal tariff increases, and that the supply of steel in sufficient quantity and quality had become unreliable. Many of the companies were manufacturers who supply the Big Three car manufacturers. They stressed that given the present supply-chain cost squeeze, the auto makers could well move more sourcing offshore.¹⁵ At a Small Business Committee hearing on September 25, 2002, Under Secretary of Commerce for International Trade Grant D. Aldonas refused to consider any early termination of the Section 201 tariffs outside the statutory review process, though he stated that the exclusion list could be modified, if steel suppliers were shown to have used false or fraudulent information in successfully objecting to product exclusions.¹⁶

Reflecting the concerns of steel users, Representative Joe Knollenberg and six co-sponsors introduced a resolution in October 2002 that urged the President to request the ITC to conduct an early review of the safeguard measures and to include consideration of the impact on consuming industries (the ITC is required to review the Section 201 tariffs eighteen months after their initiation).¹⁷ The resolution was referred to the Ways and Means Committee, where no action was taken before the 107th Congress adjourned.

On January 29, 2003, Rep. Knollenberg introduced a different version of this measure as H. Con. Res. 23. The request for an early review of the steel safeguard tariffs by the ITC was dropped, but the measure urged that the President request the ITC, “in addition to monitoring and reporting on the items enumerated in Section 204 of the Trade Act of 1974 ... also ... monitor and report on the impact of the temporary safeguards on domestic steel consuming industries.” By April 2003, H. Con. Res. 23 had 74 co-sponsors. In introducing the measure Rep. Knollenberg explained that, “The ITC is required to review the effects of the steel tariffs imposed in March 2002 by September 2003, but is under no obligation to consider the effects of the tariffs on steel consumers ... What good will the tariffs have achieved if there are no customers

¹⁵ U.S. House of Representatives. Committee on Small Business. *The Unintended Consequences of Increased Steel Tariffs on American Manufacturers* (Hearing, July 23, 2002) and *Lost Jobs, More Imports; Unintended Consequences of Higher Steel Tariffs (Part II)* (Hearing, Sept. 25, 2002). See also the reports in *AMM*, July 24 and 29, 2002. The issue of effects of the safeguard tariffs on steel consuming industries is discussed in detail in CRS Report RL31748, pp. 26-31.

¹⁶ House Small Business Committee, Part 2 (Sept. 25, 2002), pp. 5-11. *DER*, “Commerce Official Rebuffs Call to End Steel Tariffs; Leverage Cited,” (September 26, 2002).

¹⁷ *Detroit Free Press*, Oct. 1 and 10, 2002; *AMM*, Oct. 10, 2002. Technically, a “mid-point review” is necessary only when remedy measures apply for longer than three years; 19 USC §2254(2). President Bush actually proclaimed the steel safeguard remedy measures for a period of three years and one day.

left to buy steel from U.S. companies?”¹⁸ On March 20, 2003, Senator Christopher Bond introduced a companion measure, S. Con. Res. 27, which gained seven co-sponsors by the end of the month.

Rep. Knollenberg’s point was based on the statutory text of the safeguard provisions (in Section 204 of the Trade Act of 1974), which makes reference only to the effects on the injured domestic industries, with respect to the monitoring and reporting requirements on the ITC. That body is charged with monitoring “developments with respect to the [subject] domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.” The ITC must hold a hearing, prepare a mid-point report on the effects of the safeguard measures and, if requested by the President, “advise the President of its judgment as to the probable economic effect *on the industry concerned* of any reduction, modification or termination” of the safeguard action.¹⁹ (Italics added.)

The steel industry opposed Rep. Knollenberg’s view of the price impact of the safeguards, and argued that the emphasis on the interests of the consumer in H. Con. Res. 23 and similar measures is misplaced.²⁰ A coalition has been organized among steel industry suppliers and customers, claiming 250 members in 29 states, to support the counter view that steel safeguard tariffs are having a positive effect on U.S. industry.²¹

The ITC announced its procedures for the Section 204 investigation on March 10, 2003. It four dates for public hearings, as required in the statute, in July 2003.²² The hearings took place as scheduled, with a broad degree of congressional participation, all in support of continuing the Section 201 safeguard measures for the full three years announced by President Bush in March 2002.²³ A discussion of the mid-point hearings is included in an update of CRS Report 31842 on Section 201 and associated international steel issues.

In deciding whether to take action to “reduce, modify or terminate” safeguard measures after receiving the ITC report, the President, as explained in the 1988 legislative history of amendments to this section of the law, may base his decision either on:

¹⁸ Rep. Joe Knollenberg. Press release, January 29, 2003.

¹⁹ 19 USC §2254(a).

²⁰ See quote from Dan DiMicco, Chairman of the American Iron and Steel Institute (AISI) and CEO of Nucor in AISI. *Steel Works News Digest*, Feb. 4, 2003.

²¹ Their website is www.steelcoalition.org.

²² USITC. *Steel: Monitoring Developments in the Domestic Industry* (Investigation no. TA-204-9), March 10, 2003. See also *AMM*, March 13, 2003. The hearing dates, after some changes in the initial schedule, were July 10, 17, 22 and 24, 2003.

²³ *DER*, “Steel-State Lawmakers Come Out to Support Retaining Steel Tariffs” (July 23, 2003).

- “changed circumstances that warrant such reduction, modification or termination; or”
- “a majority of representatives of the domestic industry request such reduction, modification or termination on the basis that the domestic industry has made a positive adjustment to import competition.”

The statute provides that a “changed circumstances” determination may be made on the basis that either: (i) “the domestic industry has not made adequate efforts to make a positive adjustment to import competition,” or (ii) “the effectiveness of the action taken ... has been impaired by changed economic circumstances.”²⁴ The legislative history further elaborates that changed economic circumstances may include developments “such as substantial shifts in currency exchange rates or attempts to circumvent the action taken.”²⁵ In making a determination on these bases, the President is required to take into account the ITC report and must also seek the advice of the Secretary of Commerce and the Secretary of Labor.

In March 2003 the House Ways and Means Committee took two steps responsive to consuming industry concerns on the impact of the steel safeguards. On March 18, 2003, the Chairman of the committee, Representative William Thomas, requested that the ITC, under the authority of its general investigative powers (Section 332(g) of the Tariff Act of 1930), prepare a separate report on “the current competitive conditions facing the steel consuming industries in the United States, with respect to the tariffs imposed by the President on March 5, 2002.” Chairman Thomas specifically requested that this report be completed no later than the Section 204 mid-point report (September 2003) and be issued with it as a single document.²⁶ The Chairman of the Senate Finance Committee, Senator Charles Grassley, subsequently supported this request.²⁷

A few days later, on March 26, 2003, the Trade Subcommittee of Ways and Means, chaired by Representative Philip Crane, held a hearing on the impact of the Section 201 steel safeguard measures. The hearing listened to testimony of more than two dozen witnesses, including House Members, representatives of the steel industry and its major union, numerous manufacturers who detailed how their business had been hurt since the Section 201 tariffs entered into force, and similar comments from representatives from Houston and the port of New Orleans.²⁸ Speaking at the hearing, Rep. Knollenberg stated that all he was seeking in his

²⁴ 19 USC §2254(b)(1)(A).

²⁵ 100th Cong., 2nd Sess. H.Rept. 100-576. *Omnibus Trade and Competitiveness Act of 1988: Conference Report to Accompany H.R. 3* (April 20, 1988), p. 688.

²⁶ Letter from Rep. William Thomas to ITC Chair Deanna Tanner Okun, Mar. 18, 2003.

²⁷ *Inside US Trade*, “Grassley Backs Linking Steel Safeguard Review with ITC Study,” including letter of April 1, 2003, from Sen. Grassley to ITC Chair Deanna Tanner Okun (April 4, 2003).

²⁸ See committee website, [<http://waysandmeans.house.gov/hearings>], for a complete list of witnesses. Most of the prepared testimony was reported online by *Inside US Trade* on March 26, 2003.

resolution was “balance” in ITC reporting on the effects of the safeguard tariffs. With Chairman Thomas’ request to the ITC, he continued, “I am happy to say the request in my resolution has been fulfilled.”²⁹

In his opening statement at the hearing, Trade Subcommittee Ranking Member Sander Levin was more concerned that the Thomas request “indicated a clear predisposition against the safeguard relief.”³⁰ The Ranking Members of the Senate Finance and House Ways and Means Committees, Senator Max Baucus and Representative Charles Rangel, expressed their “serious concern” about Rep. Thomas’ request in a joint letter to the Chairman of the ITC. While in their letter they did “not mean to suggest that the [ITC] should not conduct the 332 investigation requested,” they further noted that “as a legal matter, a request by one congressional committee cannot amend a statute ...” In their analysis:

The statute on its face neither provides for nor contemplates an examination of the kind called for by the 332 request letter, a conclusion that is only reinforced by a review of the legislative history. Indeed, under Section 204(b), it is not clear how any such information could, consistent with law, be considered by the President in his decision whether to reduce, modify or terminate relief. Therefore, it is not possible as a legal matter for the Commission to comply with the request in the 332 letter to combine the 332 report and the 204 midterm review.”³¹

Despite such concerns, the ITC acceded to Chairman Thomas’ request. The ITC also inquired regarding the views of the USTR, which replied that there was no objection to a single ITC report, including both the statutorily required report under Section 204 and the report requested by Chairman Thomas under Section 332.³² Subsequently, the ITC announced a Section 332 investigation, *Steel-Consuming Industries: Competitive Conditions with Regard to Steel Safeguard Measures*, to be completed coterminously and published with the safeguard investigation by September 20, 2003 (Investigation no. 332-452). The investigation will “address the effects of the safeguard measures on steel consuming industries and on industries which rely on steel imports, such as ports.” It will include both the impact on specific industries and “potential economy-wide effects of the safeguard measures...”³³ The Section 332 hearings were held on June 19-20, 2003, and are further discussed in an update of CRS Report RL31842. By contrast with the later Section 204 hearings, a large number of congressional participants in the Section 332

²⁹ Rep. Joe Knollenberg. “Testimony Before House Ways and Means Subcommittee on Trade, March 26, 2003,” released by his office.

³⁰ *DER*, “Crane calls for Constructive Dialogue on Tariffs Between Steel Producers, Users” (Mar. 27, 2003).

³¹ Letter from Sen. Max Baucus and Rep. Charles Rangel to Chairman Deanna Tanner Okun, USITC, March 25, 2003.

³² Letter from John Veroneau, Office to the U.S. Trade Representative to Daniel F. Leahy, USITC External Relations Office, March 27, 2003.

³³ USITC. “ITC to Investigate Competitive Conditions in Steel-Consuming Industries with Respect to Steel Safeguard Measures,” News Release 03-037 (April 4, 2003).

hearings criticized the Section 201 safeguards as damaging to steel-consuming industries in their states.

During the Section 204 hearings there were several lively exchanges between counsel for the respondents' side and members of the Commission regarding the scope of the ITC report on the impact of the safeguard measures. Part of the discussion focused on the degree to which the ITC report should focus on the economic impact of the safeguards and make any recommendations to the President regarding their continuation or modification. The statutory language of Section 204 provides that, "Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification or termination" of the safeguards.³⁴ Commissioner Stephen Koplan noted that the ITC had received no such request from the President; he and the other commissioners stated that their role should be limited to monitoring industry developments since the initiation of safeguards. Chairman Deanna Tanner Okun concluded that, "the Commission does not intend to augment the content of its Section 204 report beyond that it is appropriate under the statute ... I would also note that neither Section 204(a)(2) [the provision requiring an ITC mid-point review] nor the Section 332(g) request letter [from Chairman Thomas] require or request the Commission to make recommendations in its respective reports."³⁵

Other Legislative Measures Affecting the Steel Industry

Presidential action under Section 201 has been far from the only action taken or proposed under U.S. law in defense of the interests of the domestic steel industry. This section of the report reviews:

- Actions undertaken by or for the domestic steel industry under U.S. trade remedy laws beyond the Bush Administration safeguard measures;
- The application and impact of other measures passed in recent years to assist the steel industry;
- Other issues, particularly legacy cost relief, which have been proposed and considered for legislative action.

Antidumping and Countervailing Duties

The U.S. steel industry has filed numerous petitions under existing U.S. AD/CVD trade law. In a report written in 2002, Edward Gresser of the Progressive

³⁴ 19 USC §2254(a)(4).

³⁵ This discussion continued over the last three Section 204 hearing days, on July 17, 22 and 24, 2003. Chairman Okun's formal statement was made at the opening of the July 22, 2004 hearing.

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."³⁶

AD/CVD cases are still being filed or pursued while the Section 201 safeguard tariffs are in place. 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 a preliminary injury determination, thus terminating the proceeding. The domestic industry appealed the determination and on May 20, 2003, the U.S. Court of International Trade reopened the issue by finding that, "The ITC has failed to demonstrate that the record on the whole contains 'clear and convincing evidence that there is no material injury or threat of such injury' ... " to the U.S. coke industry. The ITC must reply to explain its rationale in the original decision, and may possibly have to reopen the case."³⁷

A number of other cases involved products that were also subject to the Section 201 investigation. In perhaps the most extensive of such cases, on September 28, 2001, four major U.S. integrated steel producers (Bethlehem, U.S. Steel, LTV, and National Steel), who at that time supplied 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 (Argentina, Brazil, France and Korea).³⁸

Meanwhile, in another case, 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 subsequently found material injury in these cases, thereby allowing final AD/CVD duties to be imposed.³⁹ On April 3, 2002, the Commerce Department announced preliminary antidumping duties of as much as 370% on wire rod imports from seven countries. The ITC on October 2, 2002, voted in favor of a positive finding of injury from imports in this case, despite the continued existence, at that time, of Section 201 remedy relief established on these products under the Clinton Administration in 2000.⁴⁰

³⁶ Edward Gresser, *Kind to Be Cruel* (Progressive Policy Institute report, April 2002), p. 3.

³⁷ *AMM*, August 13 and September 25, 2001; May 26, 2003 print ed.

³⁸ *DER*, "U.S. Producers File Trade Case Against Cold-Rolled Steel Exporters," October 1, 2001; *AMM*, October 2, 2001.

³⁹ *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.

⁴⁰ U.S. International Trade Commission. "Carbon and Certain Alloy Steel Wire Rod from Brazil [et al.], But Not Germany, Injures U.S. Industry, Says ITC," press release 02-090. *AMM*, Apr. 3, Oct. 3 and 4, 2002; *DER*, "ITC Ruling Paves Way for AD/CVD Duties on (continued...)

But the ITC's denial of injury claims in three consecutive steel antidumping cases in May-June 2002 led some observers to conclude that "the 'door is closed' to further trade relief in the wake of the Section 201 import tariffs."⁴¹ Then, in early August 2002, U.S. domestic petitioners received another setback from the trade adjudication process when a judge of the Court of International Trade vacated an ITC decision that had established antidumping duties of more than 100% against tinplate imports from Japan.⁴²

On August 27, 2002, the impression that trade relief under AD/CVD laws was harder to obtain while the Section 201 relief is in effect was strengthened by a negative ITC determination regarding material injury on the first five of the 20 countries charged in the big cold-rolled AD/CVD case. This decision was followed by a negative finding of injury on imports from the remaining 15 countries, as well as with respect to injury from alleged subsidies.⁴³ In a joint press release with U.S. Steel, Bethlehem Steel CEO Robert S. Miller reflected the opinion of much of the domestic steel industry when he said, "This determination is flatly at odds with President Bush's steel program and the law...[it] moves the nation backwards, not forwards to a free trading future."⁴⁴ But on behalf of steel users, Jon Jensen, president of the Consuming Industries Trade Action Coalition (CITAC) said, "Most cold-rolled steel is already covered by the Section 201 tariffs of up to 30%. As a result, U.S. cold-rolled steel prices have increased 70 to 75% and steel consumers face serious and continuing supply shortages and delays."⁴⁵

Other countries have criticized 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 a WTO case related to steel against the seldom-used 1916 Antidumping Act, which authorizes a private right of action and criminal

⁴⁰ (...continued)

Wire Rod" (October 3, 2002). The Clinton wire rod and line pipe safeguard remedies expired on March 1, 2003. See U.S. Permanent Mission formal notification to the WTO in documents G/SG/N/10/USA/4/Suppl.2 and G/SG/N/10/USA/5/Rev.1/Suppl.2, released as WTO documents 03-1683 and 03-1684 (March 24, 2003).

⁴¹ *AMM*, June 25, 2002.

⁴² *AMM*, August 13, 2002.

⁴³ USITC. *Certain Cold-Rolled Steel Products from Australia, India*, [et al.] (Investigations Nos. 731-TA-965, 971-2, 979 and 981), *Determinations and Views of the Commission* (Publ. No. 3536, Sept. 2001); and, *Certain Cold-Rolled Steel Products from Argentina, Belgium*, [et al.] (Investigations Nos. 701-TA-423-5 and 731-TA-964, 966-70, 973-8, 980, and 982-3), *Determinations and Views of the Commission* (Publ. No. 3551, Nov. 2002).

⁴⁴ U.S. Steel/Bethlehem Steel press release, "Steel Industry Condemns Unjust ITC Ruling; Decision Ignores Facts and Law," Aug. 27, 2002.

⁴⁵ Quoted in *Washington Post*, August 28, 2002. See also, *DER*, "ITC Nixes Duties for Five Countries in Ruling on Cold-Rolled Steel Charges" (Aug. 28, 2002); *Inside US Trade*, "ITC Rejects Cold-Rolled Dumping Case Against Five Countries in Final Injury Vote" (Aug. 27, 2002); *Forbes.com*, "Steel Panel: No Harm, No Foul" (Aug. 28, 2002); *Bloomberg News*, "U.S. Says Cold-Rolled Imports Don't Hurt Steelmakers" (Aug. 27, 2002); *Financial Times*, August 27, 2002; *AMM*, August 28, 2002.

penalties for dumping (Section 801 of the Revenue Act of 1916, 15 USC 72).⁴⁶ Legislation to repeal the 1916 Antidumping Act was introduced in Congress in 2002, but was never acted upon. On March 4, 2003, Representative James Sensenbrenner, Chairman of the Judiciary Committee, and Representative Thomas, Chairman of the Ways and Means Committee, introduced H.R. 1073 to accomplish the same purpose.⁴⁷ Two bills have also been introduced in the Senate. S. 1155, introduced by Senator Grassley, Chairman of the Senate Finance Committee, would repeal Section 801.⁴⁸ Senators Hatch and Leahy, Chairman and Ranking Member of the Judiciary Committee, respectively, introduced S. 1080, which would repeal the entire Title VIII of the same law, and would apply to any pending cases, unlike the other two bills.⁴⁹

WTO dispute settlement panels have also ruled against the way U.S. law was applied in countervailing duty cases involving EU member countries and in an AD/CVD case involving cut-to-length steel plate from India. These cases may not require any changes in statutory law for the United States to be considered in compliance with WTO rules, but rather changes in administrative application of AD/CVD rules.⁵⁰ However, as the result of a third WTO case in 2001, the Bush Administration has requested that Congress change statutory AD law, which it believes will bring the law into compliance with the rulings of the WTO Appellate Body. This case involves AD duties on hot-rolled steel imports from Japan. The Commerce Department has already implemented part of the WTO ruling by modifying the test that it uses to determine “arm’s length” transactions, and by recalculating and reducing the dumping margins in this case. Japan is reportedly not satisfied by the reduction or the proposed legislated policy change, and wants more far-reaching changes – including full termination of the duties.⁵¹ On the other hand, a coalition representing a wide range of agricultural and industrial interests, including steel, has written key committee leaders urging Congress not to act even on the Administration request.⁵² A detailed account of U.S. compliance with adverse WTO rulings, including those in cases relating to steel, is provided in CRS Report

⁴⁶ *DER*, “EU Wants to ‘Mirror’ Illegal U.S. 1916 Act, with Japan Will Make Unique WTO Request” (Jan. 9, 2002) .

⁴⁷ See the official U.S. notice to the WTO on the introduction of this bill (WTO ref. WT/DS136/14/Add.13 – WT/DS162/17/Add.13, doc. Ref. No. 03-1203, March 7, 2003).

⁴⁸ *DER*, “Grassley Introduces Measure to Repeal 1916 Dumping Law” (May 27, 2003).

⁴⁹ *Congressional Record* (May 19, 2003), S6631-32.

⁵⁰ WTO cases DS212-213 and DS206, respectively. See CRS Report RL31474 for details.

⁵¹ See *ibid.*, under WTO case DS184; *DER*, “U.S., Japan Agree on Arbitration to Implement Hot-Rolled Steel Deadline” (Nov. 27, 2001); “WTO Sets Compliance Deadline for U.S. to Meet Hot-Rolled Steel Order” (Feb. 20, 2002); “Zoellick, Evans Urge Congress to Amend Antidumping Law to Comply with WTO Ruling” (Apr. 17, 2003); and, “Japan Questions U.S. Compliance with WTO Hot-Rolled Steel Ruling” (Apr. 21, 2003). *Inside US Trade*, “Zoellick, Evans Seek Antidumping Law Change on Hot-Rolled Steel” (Apr. 18, 2003) includes the text of the joint letter.

⁵² Letter of “Committee to Support U.S. Trade Laws” Executive Director David Hartquist to Sens. Grassley and Baucus, May 20, 2003.

RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett.

More fundamentally, some 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.⁵³ In response, the Senate adopted an amendment, co-sponsored by Senators Craig and Dayton, to its version of the 2002 Trade Act. The amendment would have required a separate vote on any changes to U.S. trade remedy laws negotiated at the WTO. An effort to table this amendment was defeated 61-38, despite reported veto threats by the Administration. More than 100 House Democrats, including some active on steel issues, wrote Speaker Dennis Hastert to urge inclusion of the provision in the final bill, but the measure was effectively dropped in the House-Senate conference on the legislation.⁵⁴ The amendment was replaced in the final bill by the establishment as a “principal negotiating objective,” the preservation of “the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions ...”⁵⁵

On June 5, 2003, Representative Philip English, Chairman of the Congressional Steel Caucus, and two other members of the House Ways and Means Committee introduced H.R. 2365, a bill that would make a number of major changes to U.S. trade law – both the AD/CVD and the Section 201 safeguard process. Similar in many respects to legislation introduced by the sponsor in the two previous Congresses, these changes would generally strengthen the position of domestic petitioners for trade relief, including the domestic steel industry. The changes proposed include:

- exclusion of “captive production” (domestic production intended by a company for its own downstream use, such as semifinished steel slabs that will be rolled into market products) from AD/CVD internal market calculations;

⁵³ See, for example, statement of Sen. Robert Byrd, *Congressional Record* (Nov. 16, 2001), 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 at WTO,” (Nov. 9, 2001). Contrarily, an analysis by an expert on 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.

⁵⁴ *Congressional Record* (May 14, 2002), pp. S4299-4326; *DER*, “House Democrats Push to Include Dayton-Craig in Trade Conference Bill” (May 24, 2002) and “TAA Deal, Dumping of Dayton-Craig Clause Crucial to Agreement on Omnibus Trade Bill” (July 29, 2002).

⁵⁵ P.L. 107-210, §2101(b)(14)(a). The language reflects that contained in H.Con.Res. 62, adopted by a 410-4 vote in the House prior to the WTO Doha meeting in 2001.

- important alterations to the calculation of prices and injury in AD/CVD cases;
- reduction of the standard of causation in Section 201 safeguard investigations, by eliminating the requirement for imports to be a “substantial” cause of injury (*i.e.*, not less than any other cause).

Added in this version of the bill are provisions that exhort the USTR to avoid international trade agreements that “would weaken existing [U.S.] trade remedy laws,” would establish a commission to review WTO dispute settlement decisions “adverse” to U.S. interests, and would encourage the USTR to seek to promote the attendance and participation of interested private parties in WTO dispute settlement cases. H.R. 2365 also would establish a licensing and surge monitoring provision for all types of steel products.

China Safeguards: The Steel Wire Hanger Case

When Congress established permanent normal trade relations with China in 2000, it also approved a special safeguard provision for U.S. domestic industries, which corresponded to product-specific safeguard provisions accepted by China as part of its WTO accession package. This China safeguard relief provision, added as Section 421 of the Trade Act of 1974, operates similarly to a Section 201 safeguard case. The big difference is that U.S. producers need prove only “material injury” or threat of such injury resulting from increases in imports from China – not the higher “substantial injury” standard required under Section 201. After a positive injury determination from the ITC, the USTR is authorized to negotiate agreements with China to prevent or remedy the market disruption caused by increased Chinese exports to the U.S. market, prior to a presidential determination on the application of safeguard remedies. Also, the President must apply a cost-benefit test on the national economic impact of safeguard relief as part of his decision.⁵⁶

The first two cases were brought under Section 421 in 2002. The first involved pedestal actuators, an electromechanical device used to adjust seats in electrically motorized carts (known as “electrical scooters”), chiefly used by disabled persons. While the ITC found injury to the only U.S. pedestal actuator producer in a 3-2 vote, the President decided against relief, saying “I find that import relief would have an adverse impact on the U.S. economy clearly greater than the benefits of such action.”⁵⁷

The second case involved steel wire garment hangers. The case was brought by three producers, though other leading producers testified against injury. The ITC found unanimously in favor of a ruling of material injury. But in the relief recommendations, all the commissioners rejected a tariff of 1.8¢ per hanger requested by the petitioners, in favor of an ad valorem tariff, with three commissioners settling

⁵⁶ 19 USC §2451.

⁵⁷ *DER*, “Bush Denies Import Curbs in First Case Applying China-Specific Trade Safeguard” (Jan. 21, 2003); *AMM*, January 23, 2003.

on a rate of 25%.⁵⁸ President Bush again decided against any import relief in this case.⁵⁹

The Byrd Amendment (Continued Dumping and Subsidy Offset Act)

Relating in part to 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 added it to the FY2001 Agriculture appropriations bill (P.L. 106-387).⁶⁰ It requires antidumping and countervailing duties to be deposited in a special account and distributed annually to domestic industry petitioners, who meet eligibility criteria, to offset expenses incurred as a result of the dumped or subsidized imports. Steel companies have benefitted from distributions under this law, which has now been successfully challenged in the WTO. The U.S. government has lost its appeal and has said that it will comply with the WTO finding. The distribution of FY 2003 AD/CV duties is proceeding nevertheless, according to the Customs Service notice filed on July 14, 2003.⁶¹

On June 26, 2001, the Customs Service initially proposed rules to implement the Byrd Amendment. A list of 2,000 eligible “affected domestic producers” was identified by the ITC, based on petitioners in 400 active dumping cases, and posted on the Customs website.⁶² 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. 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.⁶³ 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

⁵⁸ *DER*, “ITC Investigates Wire Hangers from China under Anti-Surge Provision” (Dec. 5, 2002); and, “ITC Makes Affirmative Ruling in Wire Hanger Safeguard Case” (Jan. 28, 2003); *AMM*, Jan. 21, 2003; USITC. Publ. 3575. *Certain Steel Wire Garment Hangers from China* (Invest. TA-421-2.1), *Determination and Views of the Commission* (Feb. 2003).

⁵⁹ *AMM*, April 29, 2003.

⁶⁰ Included as Title X; codified at 19 USC §1671a. For the legal background, see CRS Trade Briefing Book, *Continued Dumping and Subsidy Offset Act (Byrd Amendment)*, by Jeanne J. Grimmer [www.congress.gov/brbk/html/ebtra134].

⁶¹ 68 *Federal Register* pp. 41597-654 (July 14, 2003); *DER*, “Customs Plans to Distribute Byrd Offsets for Fiscal Year 2003” (July 15, 2003).

⁶² See [http://www.customs.gov/news/fed-reg/notices/dumping.pdf].

⁶³ 66 *Federal Register*, pp. 33920-26 (June 26, 2001); pp. 40782-40800 (Aug. 3, 2001); pp. 48546-55 (Sept. 21, 2001); and, p. 49451 (Sept. 27, 2001).

program were for \$63 million to Torrington Co. and \$31 million to Timken Co., two ball bearing manufacturers.⁶⁴

For FY 2002, the Customs Service distributed \$329 million in AD/CVD duties to qualifying petitioners. During 2002, Timken acquired the Torrington ball bearing division from its parent company, Ingersoll-Rand. The two companies, which were in the process of merging, were together by far the largest recipient of FY 2002 Byrd Amendment disbursements, at nearly \$127 million.⁶⁵ Another group of big winners was a small group of U.S. candle manufacturers, which could share up to \$65 million in collected duties owing to a successful antidumping case against Chinese imports, pending the outcome of a lawsuit in the case.⁶⁶ By contrast, the many steel company claimants shared about 20% of the disbursements, according to an *American Metal Market* calculation; the top recipient among them was U.S. Steel Corporation at \$5.9 million.⁶⁷

U.S. trading partners believe that diversion of antidumping and countervailing duties from importers to 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. On July 17, 2002, the interim report of the WTO dispute settlement panel found against the United States and concluded that the only conceivable and effective remedy would be to repeal the law altogether, a conclusion confirmed in the final report Publicly circulated on September 16, 2002. Senator Byrd issued a statement that he found the WTO ruling “appalling” and immediately requested that USTR Zoellick file an appeal, which the Bush Administration subsequently did.⁶⁸

The substance of the initial decision was reaffirmed by the WTO Appellate Body on January 16, 2003. It found that the CDSOA is a “specific action” against dumping, which is prohibited under WTO rules, though it reversed the panel’s ruling that the existence of the disbursement mechanism encourages companies to file AD/CVD petitions in a manner that undermines the industry support requirements

⁶⁴ 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.

⁶⁵ *Waterbury Republican-American*, December 31, 2002.

⁶⁶ *Cincinnati Post*, January 3, 2003.

⁶⁷ *AMM*, “Steelmakers Snack on a Smaller Slice of ‘Byrd Money’ Pie” (Jan. 20, 2003 print ed.). For the official list, see U.S. Customs Service. *CDSOA FY2002 Disbursements by Claimant/State* (Jan. 30, 2003).

⁶⁸ *Inside U.S. Trade*, “Nine U.S. Trading Partners File WTO Request on Byrd Law,” July 13, 2001; *DER*, “WTO Members Outline Case Against Byrd Amendment; First Hearing Set for February” (Dec. 10, 2001); “WTO Panel Shoots Down Byrd Amendment in Preliminary Ruling, Urges Straight Repeal” (July 18, 2002); “WTO Issues Final Ruling Condemning Byrd Amendment” (Sept. 4, 2002); and, “U.S. Must Repeal Byrd Amendment, WTO Concludes in Its Official Report” (Sept. 17, 2002); *Inside US Trade*, “WTO Interim Panel Rules Against Byrd Law Distributing Duties to Private Parties,” July 17, 2002; Sen. Robert C. Byrd, “Byrd Blasts WTO Ruling as Undermining Congressional Authority,” (press release) July 17, 2002;

in WTO agreements. In confirming the earlier ruling, however, the Appellate Body did not call for outright repeal as the only solution to the problem of the Byrd Amendment being out of compliance with WTO rules. In responding to the Appellate Body decision and to its confirmation by the WTO Dispute Settlement Body, U.S. Ambassador to the WTO Linnet Deily refrained from commenting on repeal of the law, but did say that the United States would “implement [the ruling] in a manner that respects U.S. WTO obligations.” Meanwhile, the Office of the USTR quickly noted that the outcome of the case did not adversely affect U.S. ability to enforce its AD/CVD laws.⁶⁹

Members of Congress quickly reacted to the Appellate Body decision. Seventy Senators signed on to a letter that asserted, “The WTO has acted beyond the scope of its mandate by finding violations where none exists and where no obligations were negotiated.” The Senators urged that the Bush Administration respond with three specific actions:

- “To seek express recognition of the existing right of WTO Members to distribute monies collected from AD/CV duties.”
- “To promptly integrate the Administration’s response to this WTO decision into the strategy announced in the administration’s recent [December 2002] Report to Congress on the WTO Dispute Settlement Process.”
- “To consult closely with Congress on the particulars of any approach taken in negotiations on this issue.”⁷⁰

The 2004 budget proposed by President Bush proposed repeal of the Byrd Amendment. The President’s FY 2004 budget message did not directly reference the WTO decision, but argued that the Byrd Amendment disbursements were:

... Corporate subsidies [that] effectively provide a significant “double-dip” benefit to industries that already gain protection from the increased import prices provided by countervailing tariffs. While the Administration does not believe that these payments are inconsistent with U.S. treaty obligations, repeal of the provision would allow the funds to be directed to higher priority uses.⁷¹

⁶⁹ *Inside US Trade*, “WTO Appellate Body Condemns Byrd Law as U.S. Considers Repeal” (Jan. 17, 2003); *AMM*, Jan. 17, 2003; *DER*, “Appellate Panel Upholds WTO Decision Against Byrd Amendment; EU Seeks Repeal” (Jan. 17, 2003); and, “WTO Adopts Byrd Amendment Ruling; U.S. Urged to Repeal Dumping Fees Law” (Jan. 28, 2003). For a good summary analysis of the Appellate Body decision, see Eliza Patterson, “World Trade Organization Ruling on US Continued Dumping and Offset Act of 2000 (CDSOA),” *ASIL Insights* (American Society of International Law), February 2003.

⁷⁰ Letter of Feb. 4, 2003, to President George W. Bush, signed by 70 U.S. Senators. For additional reaction, see *AMM*, “Steel Backers Circle Wagons after WTO Shoots Down Byrd” (Jan. 20, 2003 print ed.); *DER*, “Senate Staffers See No Chance of Repeal of Byrd Law Following WTO Condemnation” (Feb. 14, 2003).

⁷¹ Office of Management and Budget. *Budget of the United States Government. Fiscal Year* (continued...)

The WTO reports were formally adopted on January 27, 2003. In reports on the meeting of the WTO Dispute Settlement Body on February 26, 2003, regarding the Appellate Body decision and its implementation, the U.S. representative reiterated that the United States would implement the decision, though it requested a “reasonable period” to comply with the ruling. Some trading partners reportedly emphasized in reply the conclusion of the initial panel report that the only satisfactory means of compliance is repeal of the statute. Since the parties could not reach a mutual agreement on the compliance deadline they requested that the period be arbitrated.⁷² In a report dated June 13, 2003, the arbitrator determined that the U.S. compliance period will end December 27, 2003.⁷³

Domestic U.S. interest groups have been active for and against maintenance of the CDSOA. On May 6, 2003, the president of the United Steelworkers (USWA), Leo Gerard, wrote members of the Senate to affirm that his union “strongly opposes” repeal of the law. He noted that full repeal of the law might not be necessary in any case to comply with the WTO ruling. Mr. Gerard also criticized a suggestion that had been raised in the Senate to replace the Byrd law with “an expansion of aid to trade-affected communities.” While the USWA supported increased trade adjustment assistance, he did not believe that this should be substituted for assistance to companies under Byrd Amendment rules.⁷⁴

By contrast with views of the USWA on the importance of saving as much of the substance as possible of the Byrd Amendment, CITAC on May 27, 2003, announced formation of a new coalition to eliminate the law. Claiming to represent “such diverse consuming industry sectors as seafood, steel, restaurants, candles and retail,” CITAC supported what it called the Bush Administration view that Byrd Amendment payments are “corporate subsidies ... to industries that already gain protection from increased import prices.”⁷⁵

The repeal legislation to which the USWA’s Gerard referred was ultimately introduced on June 19, 2003, as S. 1299, by Senator Olympia Snowe and two co-sponsors. Her legislation would switch the beneficiaries of AD/CV duties from the petitioning parties, as now found to be in violation of WTO rules, to eligible

⁷¹ (...continued)

2004, p. 240. See also, *Inside US Trade*, “Presidential Budget Proposes Repeal of Byrd Law Reimbursing Petitioners” (Feb. 3, 2003); and, *AMM*, “Bush Budget Plucks Byrd Tariff Payouts” (Feb. 10, 2003 print ed.).

⁷² *DER*, “U.S. Wants ‘Reasonable Period’ to Comply with Byrd Amendment Ruling” (Feb. 27, 2003); Bureau of National Affairs. *International Trade Reporter*, “Supachai Appoints Appellate Body Member to Fix Compliance Deadline for Byrd Ruling” (April 10, 2003).

⁷³ The award of the arbitrator is on the WTO website at “United States – Continued Dumping and Subsidy Offset Act of 2000 (ARB-2003-1/16) at 50 (WT/DS217/14)(WTDS234/22) (June 13, 2003). See CRS Report RL32014 for more details.

⁷⁴ Leo W. Gerard, President USWA, Letter to U.S. Senate, May 6, 2003.

⁷⁵ CITAC. Press release, “CITAC Announces Multi-Sector Coalition to Stop WTO-Illegal Byrd Amendment Corporate Subsidies,” May 27, 2003.

communities that would be certified by the Secretary of Commerce as negatively impacted by trade. Community assistance would be distributed through a new Community Trade Readjustment Program. The bill would also repeal the existing Byrd Amendment statute. As of late July 2003, this approach to replacement of the Byrd Amendment with a substitute program had not been endorsed by the Bush Administration or congressional trade committee leaders from either party.⁷⁶

Meanwhile, as the Byrd Amendment remains U.S. law, procedures are under way to implement distribution of FY 2003 AD/CV duties. This annual round could substantially increase the total amount of collected duties to be distributed, not because of steel, but because it will for the first time include AD duties collected under the case of softwood lumber imported from Canada (ITC cases A-122-838/C-122-839).⁷⁷ There is some question as to what share of these duties may now be subject to distribution at this stage of the proceedings, but a Canadian publication has noted that the total value of collected duties is now \$1.6 billion.⁷⁸

The Emergency Steel Loan Guarantee Act of 1999

This law (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 steel industry loans by private-sector financial institutions up to a total of \$1 billion (maximum of \$250 million per company). The program is operated independently under the auspices of the Commerce Department. Its three-member board, which must approve all applications for guarantees, consists of representatives of the Secretary of Commerce, the Chairman of the Federal Reserve Board of Governors, and the Chairman of the Securities and Exchange Commission.

In the original version of the program, the guaranteed loans could carry a maturity date no later than the end of 2005. The 107th Congress approved in October 2001 an amendment in the FY 2002 Interior appropriations law (P.L. 107-63, Section 336) to extend and modify the Steel Loan Guarantee Program. It prolonged by 10 years, to the end of 2015, the deadline by when loans guaranteed under the program must be repaid. The amendment also provided 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 amendment extended the authority for loan guarantees to be issued through 2003.⁷⁹

⁷⁶ *Inside US Trade*, "Snowe Introduces Byrd Repeal-TAA Bill with Little Backing" (June 27, 2003; see also the negative reaction to S. 1299 from Weirton Steel Corp., reported in *AMM*, July 1, 2003).

⁷⁷ 68 *Federal Register*, pp. 41648-49 (July 14, 2003).

⁷⁸ *Financial Post*, July 17, 2003.

⁷⁹ *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.*

In practice, the loan guarantee program has not played a major role in alleviating industry problems. It has issued only two loan guarantees that companies have subsequently been able to take up. Moreover, Geneva Steel, which received the larger loan of \$110 million, has defaulted and is in liquidation.⁸⁰ However, two West Virginia-based steel companies, Wheeling-Pittsburgh and Weirton Steel, were actively seeking new guarantees under the program in mid-2003, and Representative Alan Mollohan with eight cosponsors introduced on July 24, 2003, a bill to reauthorize the program through 2005 (H.R. 2881).

The changes adopted in October 2001 did not enable LTV, the third-largest integrated steelmaker, to gain a loan under the program and avoid the Chapter 7 liquidation process in 2002. 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, 2001, terrorist attacks and the further downturn in the economic situation. Negotiations ensued between the company, its creditors, the USWA, the Steel Loan Board and other interested parties, particularly the City of Cleveland. But they ultimately failed to create a package that lenders and the Steel 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.⁸¹

LTV's closure in late 2001 stimulated a number of legislative initiatives to ease further the conditions for Steel Loan Program guarantees. A petition was filed in the House to discharge from committee the sweeping Steel Revitalization Act (discussed further below), which contained a provision to expand the Steel Loan Guarantee Program dramatically. The petition did not gain sufficient signatories to force floor consideration. On November 28, 2001, Representative Peter 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.⁸² On December 6, 2001, Representative Steven LaTourette and three co-sponsors introduced 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. On December 20, 2001, Senator Paul Wellstone with six co-sponsors, and Rep. Visclosky in the House, introduced companion versions of a different steel loan

⁷⁹ (...continued)

Trade, "Senate Approves Steel Program with Better Loan Terms for Companies" (July 20, 2001); *AMM*, October 12, 2001. Because of requirements to perform due diligence on applications, the Steel Loan Board has announced that all applications must be filed by June 30, 2003; *AMM*, March 12, 2003. On problems previously identified with the program, see General Accounting Office report, *Financial Management: Emergency Steel Loan Guarantee Program* (GAO-01-714R).

⁸⁰ OMB. *FY 2004 Budget.*, p. 69.

⁸¹ See CRS Report RL31748.

⁸² *Congressional Record* (Nov. 28, 2001), pp. H8519-23; *AMM*, November 30, 2001

guarantee reform measure. It would have required 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 would have raised the limit on a loan to any one company to \$350 million and increased the maximum share of a loan that can be guaranteed to 95%. None of these bills was acted on at either the committee level or the floor of either body during the 107th Congress.⁸³

The Bush Administration essentially considers the program a failure. It has proposed rescinding the remaining federal outlays required to back up any future steel loan guarantees in both the FY 2003 and FY 2004 federal budgets. “Despite the difficult market conditions [for the steel industry], there has been little demand for the program,” the FY 2004 budget proposal noted, and the Geneva Steel default left “taxpayers to pick up the loss.” The Administration had recommended rescinding \$96 million in outlays for Steel Loan Guarantee program loan guarantees, and proposed rescission of the remaining \$26 million in “no-year” outlays in the FY 2004 budget.⁸⁴ Such measures would in effect terminate the program, even with most outstanding loan guarantee authority still unused, because no funds would be available to back up a loan default, as occurred in the Geneva Steel case. However, the FY 2003 Consolidated Appropriations Resolution (H.J.Res. 2), approved by Congress in February 2003 and signed into law by President Bush, did not include the requested \$96 million rescission for the Steel Loan Guarantee program. Nor was the rescission requested by the President included in the FY 2004 Commerce, Justice and State appropriations bill (H.R. 2799) approved by the House on July 23, 2003.

As the Steel Loan Guarantee program continues in operation, Representative Bart Stupak on February 5, 2003 introduced H.R. 629, which would seek to prevent loans guaranteed by the program from benefitting foreign iron ore and steel production. The bill provides that no proceeds from a loan guaranteed under the program may be invested in a foreign iron or steel production facility. It would also not allow such proceeds to be used to pay for imports of iron ore or semi-finished steel from any country subject to U.S. trade remedies related to iron and steel.

In a closely watched decision, the Steel Loan Board on February 28, 2003, initially rejected the application of Wheeling-Pittsburgh Steel for a loan guarantee. The company had been in bankruptcy for two years, and had hoped to use the federal loan guarantee to help modernize its steelmaking operations by the installation of an electric arc furnace. The company in its annual financial statement had said that its restructuring under Chapter 11 was “contingent on the approval of a \$250 million

⁸³ For a discussion of bills in the 107th Congress to amend the Emergency Steel Loan Guarantee program, see Stephen Cooney, CRS Report RL31107 *Steel Industry and Trade Issues* (last updated Oct. 10, 2002), pp. 58-60.

⁸⁴ OMB. *FY 2004 Budget Proposal*, p. 69. See also *Inside US Trade*, “Bush Budget Proposal Seeks Elimination of Funding for Steel Loan Program” (Feb. 4, 2003); *AMM*, “Default Prods Call to Nix Steel Loan Funds” (Feb. 10, 2003).

loan guarantee” from the Board. But the Steel Loan Board reportedly “was unconvinced the company had the earning potential to pay the loan.”⁸⁵

The company re-applied almost immediately with an amended loan guarantee request. Reportedly, the states of Ohio and West Virginia, which are financing \$27 million of the total loan package, agreed to ease their repayment terms, and the company’s suppliers also agreed to finance \$8 million of the non-guaranteed portion of the loan. These improved terms apparently led the Board to reverse its decision and approve the guarantee, though the funds will not be released until the company has emerged from Chapter 11 bankruptcy protection.⁸⁶ The company achieved a major step in this direction on June 26, 2003, when it reached a deal with the USWA for a new labor agreement. The agreement was sent to union members for ratification. Wheeling-Pittsburgh also reached agreement with the Pension Benefit Guarantee Corporation, whereby the government-chartered company agreed to rescind its earlier takeover of the steel company’s pension fund.⁸⁷

Meanwhile, Weirton Steel ended a long battle against bankruptcy in May 2003, and requested Chapter 11 reorganization status. To help finance its reorganization and modernization projects to help the company return as a viable competitor, Weirton also sought a \$175 million loan guarantee from the Steel Loan program on June 30, 2003, the last possible date for new applications under existing program procedures.⁸⁸

The Wheeling-Pitt and Weirton applications have particularly drawn the ire of U.S. minimill executives, who openly criticized the pending guarantees as subsidies to struggling competitors in the integrated steel industry.⁸⁹ And Federal Reserve Board Governor Edward Gramlich, who is serving as Federal Reserve Board Chairman Alan Greenspan’s representative on the Steel Loan Board, has publicly criticized the loan guarantee process as an ineffective means of assisting industries in financial difficulties.⁹⁰

⁸⁵ Wheeling-Pittsburgh Steel Corp. “Wheeling-Pittsburgh Steel Announces Results for 2002,” press release, Feb. 24, 2003; *Herald-Star* (Steubenville, OH), March 2-3, 2003; *Wall Street Journal*, March 3, 2003.

⁸⁶ Association of Iron & Steel Engineers (AISE). *Steel News*, “Wheeling-Pitt’s Loan Guarantee Is Approved” (March 27, 2003); *AMM*, March 28, 2003.

⁸⁷ AISE. *Steel News*, “Wheeling-Pittsburgh Reaches New Labor Agreement” (June 26, 2003). *AMM*, June 27 and July 14, 2003. Reuters, “WHX Says PBGC Won’t Terminate Pension Plan” (July 25, 2003); *New York Times*, July 26, 2003.

⁸⁸ AISE. *Steel News*, “Weirton Steel to Seek \$175 Million Through Loan Guarantee Program” (June 26, 2003); *AMM*, July 2, 2003.

⁸⁹ *AMM*, June 27, 2003.

⁹⁰ *DER*, “Gramlich Calls Loan Guarantee Boards Ineffective Way to save Failing Industries” (April 25, 2003). A summary of his April 24 remarks before the National Economists Club is available at www.federalreserve.gov/boarddocs/speeches/2003.

Export-Import Bank Loans

Members of the 107th Congress became seriously concerned over the possibly negative impact on U.S. steel producers of loans made or guaranteed by the U.S. Export-Import Bank (Exim) for transactions benefitting foreign competitors. This concern led to modification of Exim economic impact review procedures, after 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.

The Senate Banking Committee on July 18, 2001, considered an amendment to the Exim reauthorization bill to prevent it from lending to any project associated with a foreign company accused of dumping, although the amendment was withdrawn. Meanwhile, Exim itself on July 16, 2001, had announced proposed modifications to its procedures for consideration of potentially adverse U.S. domestic economic impact of proposed Exim loans and guarantees. On the House side, Representatives Peter Visclosky and Alan Mollohan co-sponsored an amendment to the FY 2002 Foreign Operations appropriations bill to reduce Exim support, which passed by a vote of 258-162. The amendment transferred \$18 million from Exim to the child health and survival programs in Title II of the same bill.⁹¹

On September 20, 2001, Exim announced the changes to its revised procedures. It decided not to prohibit outright financing for a company subject to a preliminary AD or CVD investigation, but that such an investigation is a “potential indicator” of commodity oversupply. It would serve as a “yellow flashing light,” though not a “stop sign,” for a proposed transaction. The next day Representative Patrick Toomey offered an amendment in a Financial Services subcommittee markup of the Exim reauthorization bill, to ban financing for “any entity” subject to AD/CVD and Section 201 investigations. This amendment was criticized by supporters of Exim and U.S. business interests, and lost by a single vote (11-10).⁹² He then reintroduced a modified version of his amendment at the full committee level on October 31, 2001, and this version was approved by voice vote.⁹³

Final action on Exim reauthorization was not agreed until late May 2002. It was approved by the House on June 5, 2002, on a vote of 344-78, and by the Senate on a voice vote the next day. The bill reauthorizing Exim through FY2006 was signed into law by President Bush as P.L. 107-189.⁹⁴ Exim is now prohibited by statute from providing a loan or guarantee “for the resulting production of substantially the same product that is the subject of” either a preliminary AD/CVD order or a Section

⁹¹ *Congressional Record*, July 24, 2001, pp. H-4437-47.

⁹² *DER*, “House Panel Narrowly Defeats Amendment Restricting Exim Funding,” September 24, 2001.

⁹³ *DER*, “Exim Bank Reauthorization Bill Clears House Panel with New Restrictions on Loans,” November 1, 2001.

⁹⁴ *AMM*, May 24, 2002; *DER*, “Short-Term Exim Extension Expected, as Lawmakers Complete Conference Bill” (May 23, 2002) and “Exim Bank Conference Report Cleared for President’s Signature” (June 11, 2002).

201 injury determination. Exim was also required to establish procedures to insure that any loans to such entities do not result in increased imports of “substantially the same products” as are under investigation.⁹⁵

Exim quickly aroused further interest under the new rules, specifically with reference to a proposed \$19 million loan for an export of steel pickling equipment from a Texas company, Delta Brands Inc. (DBI), to the Turkish steel company Erdemir. Critics charged that the equipment would increase the capacity of the Turkish mill’s production, although Turkey had been specifically granted a developing country exemption from U.S. steel safeguard tariffs for most products. Rep. Toomey protested the Turkish deal to Exim and the Exim board on August 15, 2002, voted not to proceed with the deal. American Iron and Steel Institute (AISI) president Andrew Sharkey expressed approval of the outcome, but DBI’s president emphasized in a letter to President Bush that the rejection would aid his European competitors, while he was also losing business to them among U.S. steelmakers.⁹⁶

The House Appropriations Committee in its report on approving the Foreign Operations appropriations bill stated that it “expects the Export-Import Bank to report back to the Committee any steel-related proposals posted on the agenda of the Export-Import Bank’s Board.”⁹⁷ On November 26, 2002, Exim announced a further redrafting of its economic impact review procedures, pursuant to the changes in its charter made in the reauthorization of June 2002.⁹⁸ Exim has now established “screens” to determine if proposed transactions may be associated with specific legislative prohibitions and a potential cause of substantial injury to the U.S. economy. If a subject capital goods export will enable a foreign buyer to establish or expand production of an exportable good, the transaction is further analyzed under one of the following three categories:

- Capital goods transactions relating to products *not* subject to final or preliminary U.S. trade remedy actions are subject to a “detailed economic impact analysis,” if the transaction value is more than \$10 million and if the establishment or expansion of foreign production capacity totals 1% or more of U.S. production.
- Transactions subject to “final trade measures” are subject to automatic prohibition, without any detailed economic analysis, unless the applicant can show that the exporter or the U.S. economy will be “extraordinarily harmed” by denial of Exim support. Final

⁹⁵ P.L. 107-189 §18.

⁹⁶ *AMM*, July 29 and Aug. 1, 16 and 26 (print ed.), 2002; *DER*, “Export-Import Bank Denies Loan Guarantee for Exports to Turkish Steel Plant” (August 16, 2002).

⁹⁷ House Report 107-663, p. 6; similar language was adopted in the manager’s statement on the FY2003 Consolidated Appropriations Resolution (H.Rept. 108-10, p. 934), signed into law as P.L. 108-7 by President Bush on Feb. 20, 2003.

⁹⁸ Export-Import Bank of the U.S. “Ex-Im Bank Revises Economic Impact Procedures,” press release, November 26, 2002.

Board action on such a determination would require a 14-day public notice and comment period.

- Transactions over \$5 million that are subject to preliminary AD/CVD injury determinations or over \$10 million that are subject to a Section 201 investigation initiated by the executive or legislative branch (but not private parties) must be provided a 14-day notice and comment period. If, based on comments received, the Exim staff determines that the transaction “poses the risk of substantial injury,” then it will not go forward until Exim has conducted a detailed economic impact analysis.⁹⁹

National Security and Defense Issues

The role of steel in U.S. national security has been raised frequently during discussions of various steel-related issues. In particular, a number of Members of Congress mentioned the issue during appearances before the ITC.

Steel Industry Report on National Defense and Economic Security.

On December 6, 2001, three steel industry associations, in cooperation 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 claims 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 of steel are directly or indirectly utilized annually in all forms of defense applications. Beyond such direct Defense Department 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.¹⁰⁰

Section 232 Investigation on National Security. 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

⁹⁹ *Ibid.* “Fact Sheet: Economic Impact Procedures” (March 2003).

¹⁰⁰ *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).

232, although in 1979 and 1982, Section 232 was used as the legal basis to ban oil imports from Iran and Libya.¹⁰¹

In January 2001, Representatives James Oberstar and Bart Stupak wrote then-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.¹⁰² 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.” The report was released to the public on January 9, 2002. It 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 20% of U.S. iron ore and 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.¹⁰³

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. Based on these findings, the Commerce Department recommended no action under Section 232 of the Trade Act.¹⁰⁴

Reps. Stupak and Oberstar criticized the Commerce Department finding, as both noted continuing closures and pressure from imports in the iron ore and steel industries. USWA president Leo 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.¹⁰⁵

¹⁰¹ 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).

¹⁰² Text of letter in *Inside U.S. Trade* (January 26, 2001).

¹⁰³ 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).

¹⁰⁴ *Ibid.*, pp. 13-16, 37.

¹⁰⁵ *DER*, “Iron Ore/Semi-Finished Steel Imports Not Seen Threatening National Security,” (continued...)

Steel Issues in Defense Procurement. The House passed on November 28, 2001, the FY 2002 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...”¹⁰⁶ 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 10, 2002.¹⁰⁷

In the Second Session of the 107th Congress, a bill was introduced similar to the House-passed requirement of November 2001. But the FY2003 Defense appropriations bill approved in both Houses and which President Bush signed into law contained only a provision similar to that included previously, limited to carbon steel armor and armor plate.¹⁰⁸

On February 5, 2003, Reps. Stupak and LaTourette introduced H.R. 628, which once again proposed the broad prohibition on Defense Department procurement of equipment made with foreign steel. However, both the House and Senate versions of the FY 2004 Defense appropriations bill (H.R. 2658 and S. 1382) again only contained the previous language on armor plate, in both cases as Section 8030.

In the FY 2003 Military Construction appropriations law, there was also a new provision which required that “American steel producers, fabricators and manufacturers” must have the opportunity to compete for steel procurement in any military construction project.¹⁰⁹ Such a provision is again included in the FY 2004 Military Construction appropriations bill, as approved in both Houses (H.R. 2559, Sec. 108).

Steel Issues in Civilian Infrastructure Procurement. In the House version of the Coast Guard appropriation for FY 2003, a provision established a form of preference for U.S.-made “steel, iron and manufactured products” in projects designed to alter bridges for navigation purposes. This provision was included in the final FY 2003 consolidated appropriations law. Funding for such projects was made contingent upon use of U.S.-produced products, “unless contrary to law or

¹⁰⁵ (...continued)

Jan. 10, 2002; and “USWA Blasts Administration Ruling on Imports of Iron Ore, Semi-Finished Steel,” Jan. 11, 2002.

¹⁰⁶ Section 8158, H.R. 3338.

¹⁰⁷ P.L. 107-117 §8033 (See House Conference Report 107-350).

¹⁰⁸ P.L. 107-248 §8030.

¹⁰⁹ P.L. 107-249 §108.

international agreement, or unless the Commandant of the Coast Guard determines such action to be inconsistent with the public interest or the cost unreasonable.”¹¹⁰

A “Buy America” steel provision was also included in legislation introduced on June 26, 2004, by Representative Jerry Costello and 34 cosponsors, to provide funding for a major infrastructure investment program (H.R. 2615). Section 1005 authorizes federal funding for a project only if “steel and manufactured goods used in the project are produced in the United States,” with a 25% price preference level. The bill was referred to multiple committees of jurisdiction. On July 15, Senators Feinstein and Durbin introduced a similar bill (S. 1409).

Industry and Legacy Cost Relief Legislation

Congress in recent years has addressed the threat posed by steel company bankruptcies to employee health care and pension benefits (“legacy costs”). The legacy cost problem, including effects on industry consolidation and the impact on worker and retiree benefits, is discussed in detail in CRS Report RL31748. That report describes how the Trade Adjustment Assistance Act (TAA) was expanded in the Trade Act of 2002 to provide limited relief in covering the health care costs of retired steelworkers and others who receive pensions through the Pension Benefit Guaranty Corporation (PBGC).

The USWA and many Members of Congress do not believe that this measure adequately addresses the loss of benefits by steel workers and retirees. President Gerard of the USWA, for example, testified in May 2003 before the Senate Appropriations Committee’s Labor, Health and Human Services and Education Subcommittee that:

The United States must either repair its employer-based health-care system and relieve a considerable disadvantage for American manufacturing firms, or the nation must abandon our current system for a system similar to Canada’s or other industrialized nations”¹¹¹

A number of measures were considered in the 107th Congress to deal with this issue. One of the most sweeping was Title II of the Steel Revitalization Act introduced in the House by Representatives Peter Visclosky and Jack Quinn on behalf of the Congressional Steel Caucus. It would have established a 1.5% sales tax on U.S.-made steel products and imports to finance the health care benefits of steelworker retirees and a federally administered health care program for steel workers. The bill gained 228 cosponsors by April 2002, but never made it to the

¹¹⁰ Conference Report on H.J.Res. 2 (H.Rept. 108-10), Division I, Title I (p. 381, “Alteration of Bridges”).

¹¹¹ Quoted in *AMM*, May 15, 2003.

House floor.¹¹² This approach to the legacy cost problem was strongly supported by the USWA, but not by steel companies or the industry's trade associations.

In the Senate during the 107th Congress, other legislation was proposed by Senator Jay Rockefeller and others that would have provided more comprehensive relief for retiree steelworkers than the TAA amendment ultimately adopted. An effort to add a comprehensive steelworkers' legacy cost provision to an energy bill failed in April 2002.¹¹³ Another effort to adopt a broader TAA amendment for steelworkers lost on a cloture vote in May 2002.¹¹⁴ Several pieces of legislation on steel retiree health care relief similar to the Rockefeller bill were also introduced in the House and a hearing was held there on the issue, but no further action was taken.¹¹⁵

In the early months of the 108th Congress, there has been minimal activity on the legacy cost issue. The PBGC takeover of bankrupt steel company pension funds, industry consolidation with new labor agreements, and the limited relief of retirees through tax credits for health care in the 2002 Trade Act have resolved some of the problems.

Representative Peter Visclosky asserted that amendments to tax legislation supported by Chairman Thomas of the Ways and Means Committee would have excluded some retirees from bankrupt steel companies from participating in the coverage provided by the Trade Act TAA amendments. As leaders of the Congressional Steel Caucus, he and Representative Phil English introduced the Health Care Tax Credit Enhancement and Steel Security Act (H.R. 1999) on May 7, 2003. This bill would:

- Clarify the status of retiree applicants so that they would not have to finance three months' worth of health care coverage on their own, before becoming eligible for coverage under the new law;
- Lower the age of eligibility for the TAA health care tax credit from 55 to 50 years of age and establish eligibility of spouses of retirees for the tax credit, if they are not in the age band covered by the law;

¹¹² The House bill number was H.R. 808, and the Senate number was S. 957. Sen. Rockefeller also introduced a bill containing only the health care and environmental titles of this legislation as S. 910. A House discharge petition introduced in late 2001 gained only 124 signatures (House Petition 107-5).

¹¹³ *Washington Post*, April 19, 2002. The amendment was based on S. 2189, a bill introduced by Sen. Rockefeller. But Rockefeller and other supporters opposed the energy-related initiative, because of opposition to the underlying provision in energy legislation.

¹¹⁴ *Congressional Record* (May 16, 2002), S4505-6; (May 21, 2002), S4581-91; *Roll Call Daily*, May 21, 2002; *Inside US Trade*, "Steel TPA Amendment Fails on Procedure, Withdrawn by Sponsors" (May 21, 2002).

¹¹⁵ Bill numbers included H.R. 4574 and H.R. 4646. On September 10, 2002, the Subcommittee on Commerce, Trade and Consumer Protection of the House Energy and Commerce Committee held a hearing on the Dingell bill.

- Prolong until 2010 the monitoring and licensing provisions on steel imports that were established by President Bush as part of the Section 201 safeguard actions.¹¹⁶

By late July 2003, H.R. 1999 had gained 116 cosponsors. A Senate version (S. 1018) introduced by Senator Evan Bayh has five cosponsors.

The Outlook for Legislation 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. The measures taken by the President have engendered a strong international reaction and are being challenged under WTO rules.¹¹⁷ 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 changed current U.S. trade law.

The impact of the Section 201 safeguard tariffs on domestic industry remains a hotly debated subject. Much of the U.S. steel industry remains financially troubled. However, the closure of some domestic capacity because of financial distress, a substantial rise in prices in early 2002, the Section 201 trade relief, and a recent fall in the dollar's exchange rate against the currencies of some major competing producers all helped provide a better year for the industry as a whole in 2002. Conversely, some industries that use steel complain that higher domestic steel prices, resulting at least partly from trade remedy action could delay or derail the consuming industries' recovery from the recent economic recession, or even drive some of them offshore. Thus, some companies and Members of Congress are supporting a review of the situation of steel consumers in the ITC midterm report on the steel safeguard tariffs and a possible moderation or elimination of the safeguard tariffs. But with markets and prices weaker in 2003 than in 2002, the steel industry strongly supports maintenance of President Bush's relief measures for the full duration.

For Additional Reading

CRS Report RL31748, *The American Steel Industry: A Changing Profile*, by Stephen Cooney.

CRS Report RL31842, *Steel: Section 201 Safeguard Actions and International Negotiations*, by Stephen Cooney.

CRS Report RL31474, *Steel and the WTO: Summary and Timelines of Pending Proceedings Involving the United States*, by Jeanne J. Grimmer and Stephen Cooney.

¹¹⁶ *AMM*, May 8, 2003.

¹¹⁷ On these international challenges, see CRS Report RL31474, CRS Report RL31842, and CRS Report RL32014.